123-127

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1886.

No. 292. 33

THE NORTH PENNSYLVANIA RAILROAD COMPANY, PLAINTIFF IN ERROR,

vs.

THE COMMERCIAL NATIONAL BANK OF CHICAGO.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF PENNSYLVANIA.

FILED SEPTEMBER 12, 1884.

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1 UNITED STATES, *Eastern District of Pennsylvania,* } *sct:*

The President of the United States to the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, Greeting:

Because that in the record and process and also in the rendering of judgment in a suit before you, between The Commercial National Bank of Chicago, a corporation located and carrying on business in the State of Illinois, plaintiff, and the North Pennsylvania Railroad Company, a corporation located and carrying on business in the State of Pennsylvania, defendant in a plea of trespass on the case, a manifest error has intervened, to the great damage of the said The North Pennsylvania Railroad Company, as in its complaint has been stated, and as it is just and proper that the error, if any there be, should be corrected in due manner, and that full and speedy justice should be done to the parties aforesaid in this behalf, you are hereby commanded that if judgment thereof be given, then, under your seal, you do, distinctly and openly, send the record and process in the suit aforesaid, with all things concerning them and this writ, so that you have the same before the honorable the justices of the Supreme Court of the United States, sitting at Washington, D. C., on the second Monday of October next, that, the record and process aforesaid being inspected, they may cause to be done thereupon what of right ought to be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this first day of July, A. D. one thousand eight hundred and eighty-four, and in the one hundredth and eighth year of the Independence of the United States.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of the Circuit Court U. S.

2 THE UNITED STATES OF AMERICA, *ss:*

To the Commercial National Bank of Chicago, a corporation located and carrying on business in the State of Illinois, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the eastern district of Pennsylvania, in the third circuit, wherein The North Pennsylvania Railroad Company, a corporation located and carrying on business in the State of Pennsylvania [is] plaintiff and you are defendant in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in said writ of error mentioned, shall not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness my hand this first day of July, in the year of our Lord one thousand eight hundred and eighty-four.

WM. BUTLER, *Judge.*

2½ I accept service of the within and request the clerk of the Supreme Court to enter my appearance for the defendant in error.

July 11, '84.

WAYNE MacVEAGH.

UNITED STATES OF AMERICA, *Eastern District of Pennsylvania,* } ss:

3 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit.

THE COMMERCIAL NATIONAL BANK OF CHICAGO, a Corporation Located and Carrying on Business in the State of Illinois,

vs.

THE NORTH PENNSYLVANIA RAILROAD COMPANY, a Corporation Located and Carrying on Business in the State of Pennsylvania.

Pleas and proceedings before the honorable the judges of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, of April session, 1883, No. 36.

It is thus contained:

Be it remembered that on the 28th day of March, A. D. 1883, The Commercial National Bank of Chicago, by its attorney, Wayne McVeagh, Esq., comes into court here and sues forth therefrom a writ of summons against The North Pennsylvania Railroad Company, which, with the endorsement and return thereto, is in the words and figures following, to wit:

4 UNITED STATES, *Eastern District of Pennsylvania,* } *sct:*

The President of the United States to the marshal of the eastern district of Pennsylvana, Greeting:

We command you that you summon The North Pennsylvania Railroad Company, a corporation located and carrying on business in the State of Pennsylvania, late of your district, if it may be found therein, so that it be and appear before the judges of the circuit court of the United States in and for the district of Pennsylvania, of the third circuit, at a session of the same court to be holden at Philadelphia on the first Monday of April next, to answer to The Commercial National Bank of Chicago, a corporation located and carrying on business in the State of Illinois, in a plea of trespass on the case; and have you then [and] there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at Philadelphia, this 25th day of March, A. D. 1883, and in the 107th year of the Independence of the United States.

[SEAL.]

SAMUEL BELL,
Clerk of Circuit Court U. S.

4½ [Endorsed:] No. 36. Circuit court. April session, 1883. The Commercial National Bank of Chicago vs. North Pennsylvania Railroad Co. Summons. Case. Returnable on the first Monday of April next. Wayne MacVeagh, attorney for plaintiff. Returned & filed April 5, 1883.

PHILADA., *April* 1, 1883.

We hereby accept service of the within writ and request the clerk to enter our appearance for the defendant company.

JAMES E. GOWEN,
WM. ROTCH WISTER,
For Def'ts,
Per W. R. W.

To Samuel Bell, Esq., clerk of C. C. of U. S.

5 And afterwards, to wit, on the 17th day of April, A. D. 1883, the plaintiff, by its attorney, Wayne MacVeagh, Esq., comes into court here and files iis declaration, which, being read, is as follows, to wit:

6. EASTERN DISTRICT OF PENNSYLVANIA, *ss:*

Circuit Court of the U. S. April Sessions, 1883.

COMMERCIAL NATIONAL BANK OF CHICAGO
vs.
THE NORTH PENNA. RAILROAD COMPANY. } No. 36.

The North Pennsylvania Railroad Company, a corporation located and carrying on business in the State of Pennsylvania, was summoned to answer the Commercial National Bank of Chicago, a corporation located and carrying on business in the State of Illinois, of a plea of trespass on the case; whereupon the said plaintiff, by Wayne MacVeagh, its attorney, complains for that—

Whereas the said plaintiff heretofore, to wit, on the 11th day of November, A. D. 1877, to wit, at Philadelphia, in the State of Pennsylvania and district aforesaid, was lawfully possessed as of its own property of certain goods and chattels, to wit, 202 live cattle of the kind and description known as beef cattle, weighing 240,000 pounds, of great value, to wit, of the value of $30,000, lawful money of the United States of America, and being so possessed the said
7 plaintiff afterwards, to wit, on the day and year last above mentioned, in the district aforesaid, casually lost the said cattle out of its possession, and the same afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, came into the possession of the said defendant by finding, yet the said defendant, well knowing the said goods and chattels, to wit, the said live cattle, to be the property of the said plaintiff, and of right to belong and appertain to it, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf, hath not as yet delivered the said goods and chattels, to wit, the said live cattle, or any of them or any part thereof to the said plaintiff, though

often requested so to do, and hath hitherto refused so to do, and afterwards, on the day and year last aforesaid, at the city and State aforesaid, converted and disposed of the said cattle to its own use.

And also for that whereas the said plaintiff heretofore, to wit, on the 18th day of November, A. D. 1877, to wit, at Philadelphia,
8 in the State of Pennsylvania and district aforesaid was lawfully possessed as of its own property of certain other goods and chattels, to wit, 202 live cattle of the kind and description known as beef cattle, weighing 260,000 pounds, of great value, to wit, of the value of $40,000, lawful money of the United States of America, and being so possessed the said plaintiff afterwards, to wit, on the day and year last above mentioned, in the district last above mentioned, casually lost the said goods and chattels, to wit, the said live cattle, out of his possession, and the same afterwards, to wit, on the day and year last aforesaid, at the district aforesaid, afterwards came to the possession of the said defendant by finding; yet the said defendant, well knowing the said goods and chattels, to wit, the said live cattle, to be the property of the said plaintiff, and of right to belong and appertain to it, but contriving and fraudulently intending craftily and subtly to deceive and defraud the said plaintiff in this behalf, hath not as yet delivered the said goods and chattels, to wit, the said live cattle, or any or either of them
9 or any part thereof, to the said plaintiff, though often requested so to do, and hath hitherto refused so to do, and also, to wit, at the district aforesaid, converted and disposed of the said live cattle to its own use.

And also for that whereas the said defendant, before and at the time of making its promise and undertaking next hereinafter mentioned, was a common carrier for goods and chattels for hire on and by its cars and railway from Bethlehem, in the State of Pennsylvania, to the city of Philadelphia, in the said State, to wit, in the eastern district of Pennsylvania aforesaid; and the said defendant, being such carrier, afterwards, to wit, on the 10th day of November, 1877, in the district aforesaid, received from one Paris Myrick, through the Lehigh Valley Railroad Company, certain goods and chattels, to wit, 202 live cattle of the kind and description known as beef cattle, weighing 240,000 pounds, of great value, to wit, of the value of $30,000, lawful money of the United States of America, to be delivered by the said defendant (in consideration of a cer-
10 tain hire and reward in that behalf paid by said Paris Myrick), at Philadelphia, to the order of said Paris Myrick.

And afterwards, to wit, at the day and year aforesaid, in the district aforesaid, the said Paris Myrick, by indorsement on a certain draft, receipt, or bill of lading held by him for the said live cattle, for a valuable consideration paid to him by the plaintiff, to wit, for the sum of $12,287.57, lawful money of the United States of America, ordered and directed the said 202 live cattle to be delivered to the plaintiff, whereof the defendant had notice; whereupon it became and was the duty of the defendant to deliver to the plaintiff at Philadelphia, in the eastern district aforesaid, the aforesaid goods and chattels, to wit, 202 live cattle of the value aforesaid, in accord-

ance with the order and direction of the said Paris Myrick, and according to the terms of the said bill of lading; yet the said defendant did not perform their said duty in the premises, but wholly neglected and refused to perform the same, and delivered, or caused to be delivered, the said live cattle to certain parties other
11 than the plaintiff, to wit, to J. Blaker and W. Blaker, without the order, permission, or consent of the plaintiff, whereby the said cattle and the said sums of money advanced by the plaintiff upon the said bill of lading for the same were wholly lost to the plaintiff.

And also for that whereas the said defendant, before and at the time of making its promise and undertaking next hereinafter mentioned, was a common carrier *for* goods and chattels for hire on and by its cars and railway from Bethlehem, in the State of Pennsylvania, to the city of Philadelphia, in the said State, to wit, in the eastern district of Pennsylvania, aforesaid; and the said defendant, being such carrier, afterwards, to wit, on the 17th day of November, 1877, in the district aforesaid, received from one Paris Myrick, through the Lehigh Valley Railroad Company, certain goods and chattels, to wit, 202 live cattle of the kind and description known as beef cattle, weighing 260,000 pounds, of great value, to wit, of the value of $30,000, lawful money of the United States of America,
12 to be delivered by the said defendant (in consideration of a certain hire and reward in that behalf *in* the said Paris Myrick paid), at Philadelphia, to the order of the said Paris Myrick; and afterwards, to wit, at the day and year aforesaid, in the district aforesaid, the said Paris Myrick, by indorsement on a certain draft, receipt, or bill of lading held by him for the said live cattle, for a valuable consideration paid to him by the plaintiff, to wit, for the sum of $12,448.12, lawful money of the United States of America, ordered and directed the said 202 live cattle to be delivered to the plaintiff, whereof the defendant had notice; whereupon it became and was the duty of the defendant to deliver to the plaintiff, at Philadelphia, in the eastern district aforesaid, the aforesaid goods and chattels, to wit, 202 live cattle of the value aforesaid, in accordance with the order and direction of the said Paris Myrick and according to the terms of the said bill of lading; yet the said defendant did not perform *their* said duty in the premises, but wholly
13 neglected and refused to perform the same and deliver, or cause to be delivered, the said live cattle to certain parties other than the plaintiff, to wit, to J. Blaker and W. Blaker, without the order, permission, or consent of the plaintiff, whereby the said cattle and the said sum of money advanced by the plaintiff upon the said bill of lading for the same were wholly lost to the plaintiff.

The damage of the said plaintiff [is] fifty thousand dollars, and thereupon it brings its suit.

WAYNE MacVEAGH,
Pro Pl'ff.

Endorsed: No. 36. April sessions, 1883. Circuit court of the U. S. Commercial National Bank of Chicago *vs* The North. Penna. R. R.

Co. Narr. Enter rule to plead in eight days or judgment *sec reg.* Wayne MacVeagh, *pro* pl'ff. April 17, 1883. To clerk C. C. of U. S. Filed April 17, 1883. MacVeagh.

14 And afterwards, to wit, on the 24th day of May, A. D. 1883, the defendant, by its attorneys, W. Rotch Wister and James E. Gowen, Esquire, comes into court here and files its plea, which, being read, is as follows, to wit:

C. C. of U. S., April sessions, 1883.

COMMERCIAL NATIONAL BANK OF CHICAGO
vs.
THE NORTH PENNSYLVANIA RAILROAD COMPANY. } No. 36.

And now, to wit, May 21, 1883, the said defendant, by A. Rotch Wister and James E. Gowen, its attorneys, comes and defends the wrong, &c., and says that it is not guilty of the grievance above laid to its charge in manner or form as is alleged.

(Endorsed:) No. 36. April session, 1883. C. C. of U. S. Commercial National Bank of Chicago *vs.* North Penna. R. R. Co. Plea. Filed May 24, 1883. Wister, Gowen, for def't.

15 And afterwards, to wit, on the 22nd day of April, A. D. 1884, the plaintiff, by its attorney, comes into court here, and leave of the said court being first had and obtained, filed its amendment to the narr., which, being read, is as follows, to wit:

C. C. U. S. April Sess., 1883.

COMMERCIAL NATIONAL BANK OF CHICAGO
vs.
NORTH PENNSYLVANIA RAILROAD COMPANY. } No. 36.

And now, April 22nd, on motion of Wayne MacVeagh for, plaintiff, the court grant the plaintiff leave to amend the narr. and the other portions of the record in this case so that the names and descriptions of the parties may be as follows:

Commercial National Bank of Chicago, a corporation incorporated under the national banking act, and whose location and place of business is in the State of Illinois, and which is a corporation citizen of said State, plaintiff, *vs.* The North Pennsylvania Railroad Company, a corporation chartered and doing business under the laws of the State of Pennsylvania, and which is a citizen of said
16 State, defendant.

WAYNE MACVEAGH,
For Plaintiff.

[Endorsed:] C. C. U. S. 36. April sessions, 1883. Commercial National Bank of Chicago *vs.* North Pennsylvania Railroad Company. Rule to amend narr. Filed, by leave of court, April 22, 1884. MacVeagh.

17 And thereupon it is ordered that a jury come to try the issue joined in this case.

And afterwards, to wit, on the 22d day of April, A. D. 1884, come the parties aforesaid, and the jurors of the jury aforesaid being called likewise come, to wit, 1, Henry B. Blanchard; 2, Joseph Broadbent; 3, James C. Biddle; 4, William M. Slaymaker; 5, Hugh N. Coxe; 6, Thomas C. Price; 7, Samuel McMullen; 8, John Belsterling, jr.; 9, Adam M. Leidich; 10, Francis Yundt; 11, James H. Woodburn; 12, John H. Uhrich, who are duly empanelled, returned chosen, tried, and sworn or affirmed to speak the truth, &c., in the issue joined in this case.

And afterwards, to wit, on the 23d day of April, A. D. 1884, the jurors aforesaid, upon their oaths or affirmations aforesaid, respectively do say that they find for the plaintiff and assess the damages at thirty-four thousand two hundred and seventy-one $\frac{41}{100}$ dollars ($34,271.41).

18 And afterwards, to wit, on the 26th day of April, A. D. 1884, the defendant, by its attorneys, come into our said court here and move the court for a new trial, and file the following reasons therefor, to wit:

Circuit Court of the United States for the Eastern District of Pennsylvania. April Sess., 1883.

THE COMMERCIAL NATIONAL BANK OF CHICAGO
vs.
THE NORTH PENNA. R. R. Co. } No. 36.

And now this 26th day of April, A. D. 1884, the defendant moves the court to grant a new trial in the above-entitled cause and specifies the following reasons therefor:

Because the learned judge erred in instructing the jury "that the plaintiff, upon the facts as presented by both sides, is entitled to your verdict for the amount of his claim."

JAMES E. GOWEN.
WILLIAM ROTCH WISTER.

(Endorsed:) C. C. of the United States, E. D. of Penna. No. 36. April sess., 1883. The Commercial Nat. Bank of Chicago *v.* The North Penna. R. R. Co. Motion for a new trial. Filed April 26, 1884. James E. Gowen, Wm. Rotch Wister.

19 And afterwards, to wit, on the 18th day of June, A. D. 1884, come the parties aforesaid, by their attorneys aforesaid, and this cause being called for argument on motion for a new trial, and having been argued by counsel for the respective parties, and the court not being fully advised in the premises takes further time to consider thereof.

And afterwards, to wit, on the 24th day of June, A. D, 1884, come the parties aforesaid, by their attorneys aforesaid, and the court being now fully advised in the premises, it is ordered that the motion for a new trial be denied and judgment entered on the verdict in favor of plaintiff and against the defendant.

Whereupon judgment is entered accordingly.

20 *Bill of Exceptions.*

Be it remembered that in the term of April, A. D. 1883, came the Commercial National Bank of Chicago into the circuit c't of the U. S. for the eastern district of Pennsylvania and impleaded The North Pennsylvania Railroad Company in a certain plea of trover and conversion, &c., in which the said Commercial National Bank of Chicago, declared prout narr., and the said North Pennsylvania Railroad Company pleaded prout pleas, and thereupon issue was joined between them.

And afterwards, to wit, at a session of said court, held at the district aforesaid, before the Honorable Wm. Butler, one of the judges of the said court, on Tuesday, the twenty-second day of April, A. D. 1884, the aforesaid issue between the said parties came to be tried by a jury of the said district, for that purpose duly impannelled (prout list of jurors), at which day came as well the said plaintiff as the said defendant, by their respective attorneys, and the jurors of the jury, aforesaid impannelled to try the said issues, being also called, came and were then and there in due manner chosen and sworn, or affirmed, to try the said issue; and upon the trial the counsel of the said plaintiffs, to maintain the issue raised upon his part, offered in evidence the following drafts, two in number, and the documents accompanying the same, as follows:

$12,287.57. CHICAGO, *Nov. 7th*, 1877.

Pay to the order of George L. Otis, cashier, twelve thousand two hundred and eighty-seven $\frac{57}{100}$ dollars, value received, and charge the same to account of—

PARIS MYRICK.

To J. & W. Blaker, Newtown, Bucks Co., Pa.

Endorsed: Pay First National Bank, or order, for account of Commercial National Bank of Chicago. Geo. L. Otis, cashier. Presented for acceptance & duly protested Nov. 27, 1877.

21 $12,448.12. CHICAGO, *Nov.* 14, 1877.

Pay to the order of Geo. L. Otis, cashier, twelve thousand four hundred & forty-eight $\frac{12}{100}$ dollars, value received, and charge same to account of—

PARIS MYRICK.

To J. & W. Blaker, Newtown, Bucks Co., Pa.

Endorsed; Pay First National Bank, or order, for account of Commercial National Bank of Chicago. Geo. L. Otis, cashier. Presented for acceptance & duly protested November 27, 1877.

22 New form, 392, 8-22-7, 5,000, R. B. & Co.

"A."

MICHIGAN CENTRAL RAILROAD COMPANY,
CHICAGO STATION, *Nov. 7th*, 1877.

Received from Paris Myrick in apparent good order. Consigned to order Paris Myrick.

Notify J. & W. Blaker, Philadelphia, Pa.

Articles.	Marked.	Weight or measure.
Two hundred & two (202).	Cattle.	240,000.

Advanced charges, $12.00.

Marked and described as above (contents and value otherwise unknown), for transportation by the Michigan Central Railroad Company to the warehouse at * * *

Notice.—See rules of transportation on the back hereof.

Use separate receipts for each consignment.

WM. GROGAN, *Agent.*
B.

23 This company will not hold itself responsible for the accuracy of these weights as between buyer and seller; the approximate weight having been ascertained by track scales, which is sufficiently accurate for freighting purposes, but may not be strictly correct as between buyer and seller.

This receipt can be exchanged for a through bill of lading.

24 *Notice.*

Rules relating to transportation.

The corporation will not receive or carry any bank bills, drafts, notes, deeds, contracts, or other writings, or be responsible for their loss or injury.

No conductor or other agent of the corporation is authorized to take charge of bank-notes, money, or other valuable papers or things for or account of the company, or to receive any perquisite or reward, for himself or for the company, on or for such articles.

3. No gold or silver coin or bullion, or manufactured articles of gold or silver, jewels, watches, pictures, plated articles, statuary, musical instruments, glass, silks, or laces will be carried by the corporation, for the loss of which it will be responsible, unless with such articles, when delivered, is also delivered a memorandum, in writing, stating the character and kind of articles and their
25 value, and unless a proper extra price for the carriage and responsibility for such articles be paid.

4. Gunpowder, friction matches, and combustible articles of any description will not be taken on any terms, and if found secreted or among other goods they will be forfeited or destroyed, and in case of damage the shipper or consignor will be held liable therefor.

5. Articles will not be received for transportation unless properly packed in suitable casks, boxes, bales, or packages, and each must be well and clearly marked with the name of the consignee and of the station where they are to be delivered, otherwise they will not be receipted for, in which case no damages for the loss or miscarriage will be paid. The company will in no case be responsible for loss, injury, or damage which might have been avoided by skillful and more careful and sufficient packing, or which occurs
26 without the negligence or fault of the company or its agents. All property is subject to cooperage when necessary.

Goods in bundles will not be considered as properly packed, and the company will not be responsible for any loss of parts or of the whole of such packages.

No allowance for deficiency of lemons, oranges, or other fruit if not covered with canvass will be made.

6. The corporation will not be liable for property unless receipted for by a duly authorized agent, and the destination of the property cannot be changed after being loaded in the car.

7. The corporation will not be responsible for damage occasioned by delays from storms, accidents, or other unavoidable causes, or by *by* the decay or injury of perishable articles, or from injury to property produced by frost, heat, or the elements. Perishable property must always be prepaid.

27 8. The corporation will be liable as warehouse men only for property while in their storehouse.

9. Storage at customary rates will be charged for all property not taken from the warehouse within one day after arrival.

10. The company will not be responsible for loss or injury happening or occasioned by unruly or vicious horses, cattle, swine, or sheep, nor for accidents to the same when the agents of the company are not in fault in loading or unloading the same.

11. Goods or property consigned to any place off the company's line of road or to any point or place beyond its termini will be sent forward by a carrier or freightman, when there are such, in the usual manner, the company acting for the purpose of delivery to such carrier as the agent of the consignor or consignee, and not as carriers. The company will not be liable or responsible
28 for any loss, damage, or injury to the property after the same shall have been sent from any warehouse or station of the company.

29 New form, 392, 8-22-77, 5,000, R. B. & Co.

"B."

MICHIGAN CENTRAL RAILROAD COMPANY,
CHICAGO STATION, *Nov.* 14*th*, 1877.

Received from Paris Myrick in apparent good order. Consigned to order Paris Myrick.

Notify J. & W. Blaker, Philadelphia, Pa.

Articles.	Marked.	Weight or measure.
Two hundred & two (202).	Cattle.	260,000.

Advanced charges, $13.00.

Marked and described as above (contents and value otherwise unknown) for transportation by the Michigan Central Railroad Company to the warehouse at * * *

Notice.—See rules of transportation on the back hereof.

Use separate receipts for each consignment.

WM. GEOGAN, *Agent.*

B.

30 This company will not hold itself responsible for the accuracy of these weights as between buyer and seller, the approximate weight having been ascertained by track scales, which is sufficiently accurate for freighting purposes, but may not be strictly correct as between buyer and seller.

This receipt can be exchanged for a through bill of lading.

31 *Notice.*

Rules relating to transportation.

The corportation will not receive or carry any bank bills, drafts, notes, deeds, contracts, or other writings, or be responsible for their loss or injury.

No conductor or other agent of the corporation is authorized to take charge of bank-notes, money, or other valuable papers or things for or on account of the company, or to receive any perquisite or reward, for himself or for the company, on or for such articles.

3. No gold or silver coin or bullion or manufactured articles of gold or silver, jewels, watches, pictures, plated articles, statuary, musical instruments, glass, silks, or laces will be carried by the corporation for the loss of which it will be responsible, unless with such articles, when delivered, is also delivered a memorandum in
32 writing stating the character and kind of articles and their value, and unless a proper extra price for the carriage and responsibility for such articles be paid.

4. Gunpowder, friction matches, and combustible articles of any description will not be taken on any terms, and if found secreted or among other goods they will be forfeited or destroyed, and in case of damage the shipper or consignor will be held liable therefor.

5. Articles will not be received for transportation unless properly packed in suitable casks, boxes, bales, or packages, and each must be well and clearly marked with the name of the consignee and of the station where they are to be delivered, otherwise they will not be receipted for, in which case no damages for the loss or miscarriage will be paid. The company will in no case be responsible for loss, injury, or damage which might have been avoided by skillful
33 and more careful and sufficient packing, or which occurs without the negligence or fault of the company or its agents. All property is subject to cooperage when necessary.

Goods in bundles will not be considered as properly packed, and the company will not be responsible for any loss of parts or of the whole of such packages.

No allowance for deficiency of lemons, oranges, or other fruit if not covered with canvass will be made.

6. The corporation will not be liable for property unless receipted for by a duly authorized agent, and the destination of the property cannot be changed after being loaded in the car.

The corporation will not be responsible for damage occasioned by delays from storm, accidents, or other unavoidable causes, or
34 by the decay or injury of perishable articles, or from injury to property produced by frosts, heat, or the elements. Perishable property must always be prepaid.

8. The corporation will be liable as warehouse men only for property while in their storehouse.

9. Storage at customary rates will be charged for all property not taken from the warehouse within one day after arrival.

10. The company will not be responsible for loss or injury happening or occasioned by unruly or vicious horses, cattle, swine, or sheep, nor for accidents to the same when the agents of the company are not in fault in loading or unloading the same.

11. Goods or property consigned to any place off the company's line of road, or to any point or place beyond its termini will be sent forward by a carrier or freightman, when there are such, in
35 the usual manner, the company acting for the purpose of delivery to such carrier as the agent of the consignor or consignee, and not as carriers. The company will not be liable or responsible for any loss, damage, or injury to the property after the same shall have been sent from any warehouse or station of the company.

36 And thereupon the counsel for the plaintiff called as a witness GEORGE L. OTIS, who testified as follows, after having been duly sworn.

By Mr. MACVEAGH:

Q. You were, in 1877, the cashier of the Commercial National Bank of Chicago?

A. Yes, sir.

Q. That is a national bank of long standing in that city?

A. Yes, sir.

Q. How old?

A. Organized December, 1864.

Q. You are now the vice-president of it?

A. Yes, sir.

Q. Look at the drafts and bills of lading which have been given in evidence and state in your own way your connection with them as an officer of that bank.

A. Mr. Paris Myrick, drawer of these drafts, was a resident of Chicago and a shipper of cattle. He kept an account with the Commercial National Bank, of which I was cashier. Mr. Myrick, during the summer of 1877, or early in the fall of that year, made
37 arrangements to ship cattle which he would purchase at the stock-yard, in the city of Chicago, and ship to J. & W. Bla-

ker, at Philadelphia. He requested that the bank should cash the drafts against which these shipments were made. He stated his intention to draw and ship about once in each week. After some preliminary talk with him as to the shipments, as to the parties to whom it was shipped, I told him if he would ship the cattle, with bills of lading drawn so that they might be security to the bank for advances made, that I would cash the drafts. He asked me how they should be drawn. I told him that if he would have the bills of lading drawn to his own order and endorse them we would pass the bills of lading and the drafts to his credit. These shipments were made, as I said, about once in each week, and include the two drafts I have before me of November 7 and November 14.

38 These drafts were not paid, but were protested and returned to the bank for non-payment.

Q. Please state what you did with these drafts and bills of lading after you received them.

A. I attached the drafts to the bills of lading and forwarded them for collection to the First National Bank of Newtown, Penna.

[Q.] Mr. Gowen, you don't mean to say that you did that personally?

A. No, sir.

Q. You only speak of the custom?

A. ——.

Mr. MacVeagh:

Q. Has anything ever been paid on the drafts?

A. No, sir.

Q. Do you know what has become of the Blakers; have you any knowledge of the drawees of the drafts?

A. They are at this time in the interior of Kansas.

Q. What do you know of Mr. Geagan, the person who signed those bills of lading for the Michigan Central Railway?

A. He was the live-stock or shipping agent of the Union

39 stock-yards of Chicago of the Michigan Central railway.

Q. You have already stated that the proceeds of these drafts were placed to the credit of Mr. Myrick's account and were checked out by him in payment of these cattle.

A. Yes, sir.

Cross-examined by Mr. Gowen:

Q. When did you begin to deal with Paris Myrick?

A. In the summer or early fall of 1877.

Q. Can't you fix the date by reference to your books?

A. The nearest date, if I remember correctly, is September, 1877.

Q. Have you no recollection of dealing before September, 1877?

A. No, sir.

Q. Where did he live?

A. His home is in Kensington, Cook county, Illinois.

Q. How far is that from Chicago?

A. Seven or eight miles.

Q. Were his transactions all on account or for the Blakers?

A. All the cattle he shipped for which the bank took drafts
40 were shipped to his order to notify the Blakers.

Q. Did you know that he was purchasing for the Blakers?

A. He was purchasing for himself.

Q. What makes you think so?

A. I know it. He purchased these cattle at the stock-yard for himself.

Q. Did you hear that he purchased at one price and then sold to the Blakers, making by the bargain what he could?

A. I don't know that I did.

Q. Didn't he simply buy the cattle for the Blakers?

A. No, sir.

Q. Don't you know that he did so, and didn't you ever hear anybody testify that he did so?

A. I may have done so.

Q. Were you present when he was examined on a former occasion?

A. Yes, sir.

Q. And did he there say that he purchased them for the Blakers or as an independent transaction?

A. I don't know.

Q. When you say that he bought for himself what evidence
41 have you to support that opinion?

A. His own conversations with me.

Q. He didn't give you the price of the cattle?

A. No, sir.

Q. What was the amount, do you recollect?

A. I don't know. He said he wanted so much money.

Q. Didn't you ascertain that the cattle were reasonable security for the draft?

A. He stated what he paid for them.

Q. Did the draft correspond with the amount that he paid?

A. My recollection is that he added the charges made by the bank for collection. I don't now recollect that there were any others in addition to them.

Q. He added the charges from the bank and drew upon the Blakers for the amount?

A. Yes, sir.

Q. Did you ever know him to draw upon any one else than the Blakers?

A. No, sir.

Q. Did you ever know him to vary the amount of the draft
42 from the price of the cattle?

A. No, sir.

Q. What time of the day did you usually give to drafts?

A. Generally about the close of banking hours.

Q. You have been examined before in this controversy?

A. Yes, sir.

Q. Did you say that the money got from the bank was all used to pay for the cattle?

A. I don't recollect.

Q. Did you say anything about checks that were in possession of the banks payable to the order of those parties to whom they were sent to buy the cattle?

A. (Reporter did not hear.)

Q. You said this money was all paid for cattle?

A. I don't recollect.

Q. How do you know that the proceeds of this draft were used by Myrick to buy the cattle?

A. Mr. Myrick purchased these cattle and got some money from the bank. I can only state from hearsay whether the draft was used to pay for the cattle.

43 Q. If it were an independent purchase by Myrick, and an independent sale by the Blakers, how could he make any profit?

A. I could not state.

Q. You never heard him say that he was simply purchasing for the Blakers?

A. I never heard him say that.

Q. Did you ever hear him say what interest he had in it?

A. Yes, sir.

Q. What interest was that?

A. He got a rebate from the railway company on freight.

Q. When did you hear him say that.

A. After we had some dealings with him during this time.

Q. To what extent; was it before or after this transaction?

A. Before this transaction in controversy.

Q. You heard him say that he got a rebate from the railway company on account of freight?

A. I heard him say that was a part of his interest.

Q. Please say when the draft was sent from the bank.

A. The same day, November, 7th.

44 Q. Have you the letter here?

A. I have a copy here.

Q. Read it out.

Copy of draft read by witness.

A. I have a copy of the letter enclosing the draft—that is, so much of the letter as was written.

(Letter from the Commercial National Bank of Chicago to First National Bank of Newtown, Penna., dated November 7th, with J. & W. Blaker mentioned as drawees of draft for $12,287.57, read.)

Q. Any answer to that letter?

A. No, sir.

Q. What was the printed part?

A. The printed part would be the date, Chicago, then I enclose for collection and return, or something to that effect.

Q. Have you any recollection or memoranda to show when that letter was mailed?

A. No, sir; I have not.

Q. Now look at the next one, please.

A. The next one reads: November 14th. Wrote First National Bank of Newtown, Penna. Remit to bank of New York
45 National Banking Association for our account. Deliver bill of lading only when draft is paid.

Q. Do you know when those drafts arrived?

A. No, sir.

Q. Do you know that it was alleged as a fact that the two came very close together?

A. Yes, sir.

Q. Do you know how long a time elapsed, generally, from the date of the drawing of the draft till the time of getting the money back? The receipts were in New York or Chicago?

A. In New York.

Q. Between the date of the discount of the draft and the receipt of the remittance?

A. Seven or eight days.

Q. Seven or eight days from the date of the discount until the lodging of the remittance in New York?

A. No, sir; seven or eight days elapsed between the forwarding of the drafts and the remittance of the proceeds from Newtown to New York.

Q. Except about the seventh?

A. That is unexplainable.

46 Q. Be kind enough to look at your letter to the cashier of the Newtown Bank, dated November 16th; you have it there, have you not?

A. Yes, sir.

Q. Let me see it.

Letter from Mr. Otis, cashier of the Commercial National Bank of Chicago, to Mr. Kase, cashier of the Newtown Bank, dated November 16th, 1877:

"DEAR SIR: I notice that the drafts drawn by Paris Myrick on J. & W. Blaker, sent October 25th and November 1st, were out eighteen and fifteen days, respectively. As this is almost twice the length of time previous drafts have been out, I wish to inquire where the delay is. My charges are regulated largely by the time, and I therefore allowed nine days as sufficient time. Can you enlighten me?

"Very truly, GEORGE L. OTIS."

Q. You wrote that letter?

A. Yes, sir.

Q Have you the answer?

A. I think I have his answer.

Q. Have you got his answer there?

A. Yes, sir.

Q. What date is that?

47 A. December 8th.

Q. What does he say?

(Q. Judge BUTLER: What's his name?
A. S. C. Case.)

A. DEAR SIR: Yours of 4th received. I enclose copy of letter of November 16th, as requested.

(Letter read at length by Mr. Gowen, found among the exhibits offered in evidence in full.)

Letter from Mr. Case to Mr. Otis on November 21st, read in evidence. (See exhibits.)

Q. You got that letter?
A. Yes, sir.
Q. Have you got your telegram that Mr. Case refers to in the letter of November 21st?
A. I have Mr. Case's answer.
Q. Is the telegram correct?
A. I believe it is correct.
Q. This is a telegram from Case to Mr. Otis, and is dated November 21st.

(Telegram read in evidence. See exhibits.)

A. Yes, sir.
Q. You replied that he should hold the drafts for payment, and advise by wire when paid?
A. Yes, sir.

48 Q. Do you remember whether, in the letter which accompanied the draft of November 14, you gave Mr. Case any instructions about accepting the bills of lading?

A. No. sir; except what our printed forms of lading usually contain.
Q. You say usually; did not all the forms contain that?
A. All the forms did not.
Q. Until the protest of these last two drafts, did you know — the stock-yard where the cattle were being delivered was?
A. Not exactly. I supposed it was very near Newtown.
Q. You selected the Newtown bank on account of Mr. Blaker's living there—because the Blakers lived there at Mr. Myrick's request?

Mr. MACVEAGH: The address was given in the drafts.

Mr. GOWEN:

Q. Is that so?

49 The counsel for the plaintiff then offered in evidence certain depositions taken in the case of Paris Myrick for use of The Commercial National Bank of Chicago *vs.* The Michigan Central Railroad Company, circuit court of the United States, northern district of Illinois, under an agreement made by the parties to this cause, through their counsel, that the depositions taken in the said cause of the following witnesses, viz., Julian Blaker, Paris Myrick, S. Levi, J. Chinson, William Harris, Abram Katz, Samuel C. Case,

Henry Bennett, James Anderson, Thomas B. Shiron, A. N. Fuller, or of any of them, or any portion of the same, should be read in evidence at the trial of this cause, so far as the same should be pertinent, with the same effect as if they were original depositions taken in the pending cause, subject only to such objections as might be taken at the trial of the cause to the oral testimony of said witnesses,
50 and subject to the right of either party to take such other or further depositions of the said witnesses, or any of them, as may be deemed desirable, or to put such witnesses, or any of them, upon the stand at the trial of the cause, as follows:

Deposition of PARIS MYRICK, a witness called upon behalf of the plaintiff in said suit of Myrick, to use, &c., *vs.* Michigan Central Railroad Company.

Direct examination by Mr. LARNED:

Q. What is your name?
A. Paris Myrick.
Q. Occupation?
A. Well, I deal in cattle a part of the time, a little of everything, mostly cattle.
Q. Are you sometimes known as Paris M. Myrick?
A. Yes, sir.
Q. What was your business during the months of October, November, and December, 1877?
A. I was buying cattle.
Q. Where?
A. Here at the stock-yards, the Union stock-yards.
51 Q. Did you ever see these papers before? (Indicating).
A. Yes, sir.

Papers attached to the witness' deposition and marked "Exhibits A and B."

It is stipulated that copies of the exhibits offered may be attached to the witness' deposition, with the same force and effect as the originals.

Q. State the date of this bill of lading just marked "Exhibit A."
A. November 7th.
Q. What is the date of the one marked "Exhibit B?"
A. November 14th.
Q. State what these papers marked here are.
A. Well, sir, those papers were drawn up for a bill of lading.
Q. Who gave those papers to you?
A. The Michigan Central loader, the shipping agent.
Q. What was his name?
A. William Geagan.
Q. What position did he occupy in the Michigan Central Railroad Company?
52 A. Shipping agent, stock agent.
Q. Where is his place of business?
A. In the stock-yard.

Q. Is that his signature on these papers?
A. Well, it is his signature or his clerk's. I couldn't say which one.
Q. You don't know which one it is?
A. No; I believe the clerk'-. I guess likely his clerk done the most of the business.
Q. Had you been in the habit of shipping cattle over the Michigan Central railroad?
A. Yes, sir.
Q. Are these the usual forms of bills of lading which are given?
A. I think they are.
Q. What is the business of the Michigan Central Railroad Company? What is their business ordinarily; what do they do?
A. Ship cattle and stock.
Q. Are they common carriers?
A. I suppose they are.
Q. Whom did you take these receipts or bills of lading from?
53 A. From the shipping agent, the clerk of Geagan; I guess likely I took them from the clerk.
Q. Are they signed by the party usually signing them?
A. Yes, sir; I guess that the clerk signed all of these, perhaps.
Q. Did they come out of the general department of the road for that kind of business?
A. Yes, sir.
Q. Now, Mr. Myrick, read, if you please, how these bills of lading are made out and whom the car is consigned to.
A. Consigned to my order—to the order of Paris Myrick.
Q. Did you endorse them?
A. Yes, sir.
Q. To whom did you endorse them?
A. To the Commercial National Bank.
Q. Why?
A. I drew the amount of money that the cattle cost. I made the endorsement for the amount of money I paid for the cattle.
54 Q. Did you endorse them in blank?
A. No, sir.
Q. Look at the endorsement on the back and see how it is?
A. (Looking at papers.) That is my endorsement on the back.
Q. Now, whom did you make over these bills of lading to?
A. To the Commercial National Bank.
Q. What for?
A. For the money that I got of them.
Q. Now, state the transaction exactly, please, in your own words.
A. Well, sir, I would go down here in the first place. I went to ask them if they would cash these bills of lading, if they would let me have the money if I could get the bills of lading; they said they would, and then told me what kind of bills of lading they wanted got out. I took them out up there and come down here and endorsed them over to them.
Q. How did you pay for the cattle?

55 A. I paid by the Commercial Bank, checked it out. These F. W. P. drafts given with these bills of lading always called for just exactly what the cattle cost.

Q. What did you then do with the bills of lading?

A. I gave them to the cashier of the bank.

Q. For what purpose did you give them?

A. To secure them for their money.

Q. Did you give any evidence of indebtedness for the money you received from the bank?

A. No evidence of indebtedness.

Q. Then what did you give them, a check or draft?

A. I gave him a check.

Q. On what bank?

A. Why, I drew a draft on J. and W. Blaker.

Q. How many drafts did you draw for which these two bills were given?

A. Two only on bills of lading.

Q. Do you recollect the amounts of those drafts?

A. Well, I don't exactly. I think one of them was $13,000.00
56 and the other one nearly $12,000.00. I know the two drafts amounted to most $25,000.00; $24,000.00 and something.

Q. To whose order were these drafts?

A. I drew the drafts on J. and W. Blaker.

Q. Payable to whose order?

A. Payable to the Commercial National Bank's order.

Q. Were these bills of lading delivered by you to the bank at the same time that you drew these drafts?

A. Yes, sir.

Q. Had you ever had any prior transactions which were done in the same way?

A. With this bank?

Q. Yes, sir.

A. Yes, sir.

Q. Had the course of business been usual with you at that bank?

A. Yes, sir.

Q. Do you know whether or not the railroad company knew how you raised the money to buy these cattle?

A. I expect they did. I told them I wanted that for the Commercial National Bank.

57 Q. Did you then ship the cattle to some market?

A. Yes, sir.

Q. Shipped the cattle at what time relatively to these drafts?

A. Shipped the same day these drafts were drawn.

Q. Over the Michigan Central road?

A. Yes, sir; and Great Western.

Q. And consigned to what place?

A. Consigned to the North Philadelphia drove-yards, Pennsylvania.

Q. Look at the bill of lading and see exactly to what city they were consigned.

A. Looking over bills: "Notify J. and W. Blaker, Philadelphia, Pennsylvania."

Cross-examination by Mr. FURNESS:

Q. How long, Mr. Myrick, had you been doing this business buying cattle?

A. Drawing drafts?

Q. Yes, sir.

A. I commenced drawing the drafts, I think, the 10th of January, 1877—that is, that is the time I commenced getting them
58 in this way or partly this way; when they didn't telegraph through the bank that they would pay for the cattle I drew drafts; when they did telegraph I didn't draw any drafts, and when they didn't I did.

Q. That was the commencement of January?

A. It was the 10th of January I commenced this way.

Q. Did you buy these cattle on your own account?

A. I bought them on my own account and shipped them to them—that is, I bought them for them; they were to have the cattle.

Q. For the business of J. and W. Blaker?

A. Yes, sir.

Q. How often was that business of drawing drafts done from June, 1877, to the time these drafts were drawn?

A. I couldn't tell you; it ought to be every week; once in a while—a week they didn't send for any cattle, and January 10, I think, the bank from Philadelphia telegraphed that they would pay J. and W. Blaker's draft for two loads of cattle, and that I got up at
59 the Union stock-yards, and the cashier there had me get something from the shipping agent; *either* I can't tell you whether it was exactly like this or not (indicating).

Q. That was not at the Commercial Bank?

A. No, sir.

Q. When did you first begin the business of drawing through the Commercial National Bank?

A. I guess it was along—I think I had been drawing 2 or 3 months—3 months, perhaps longer—maybe 4 months.

Q. Did the Commercial National Bank know that you were buying these cattle for J. and W. Blaker?

A. They knew who I drew the drafts on.

Q. Was the business of buying these cattle for the Blakers through the Commercial National Bank by you always conducted in the same way that it was conducted in these two transactions?

A. I think they were nearly always this way—no, I guess
60 likely I telegraphed to the bank once or twice to pay J. and W. Blaker's draft, for I wouldn't say whether it was such an amount of money or so many car-loads of cattle; I guess likely it was for so many loads of cattle, whatever loads they wanted.

Q. Who was it telegraphed to the bank?

A. It was the bank at Newtown.

Q. When that arrangement, by which the bank at Newtown tele-

graphed to the Commercial National Bank here, was done, how was that business first entered into? I wish you would tell, Mr. Myrick, all that you know about the inception and doing of that business.

A. I was East with some horses along in—I think it was in December or the forepart of January; I told them, if they wanted me to buy cattle for them, they must get a letter of credit from some bank; that it would save a good deal of trouble;
61 get a letter of credit and I would buy the cattle and send them. They said they would do it, but they didn't; then they says, we will have our bank telegraph that they will pay for so many loads of cattle or for so much cattle, and I think it was done in that way.

Q. To whom did they telegraph?

A. They telegraphed out to Stickney first—out here at the Union stock-yards; that was this First National Bank; it was a bank in Philadelphia—Shock and Mackson or Frankfort, I won't say which one.

Q. To whom did they telegraph on these first two or three drafts?

A. They telegraphed to Stickney that they would pay Paris Myrick's draft on J. and W. Blaker for, I think it was, 2 or 3 loads of cattle; 2 I guess it was.

Q. You have stated in your examination that the first 2 or 3 drafts you drew at the Commercial National Bank were drawn in that same form?

A. Yes, sir.

62 Q. Now, to whom did they telegraph this?

A. They telegraphed it to the Commercial National Bank that they would pay Paris Mirick's drafts on J. and W. Blaker. I wrote them just what to do if they wanted stock, and he telegraphed about how he wanted it.

Q. They did that?

A. Several times. I couldn't tell exactly how many times; it was generally that way and this way all the time from January 10th.

Q. But do I understand you to say it was sometimes done one way and sometimes in the other?

A. Not after we commenced this way.

Q. Why was this method adopted in place of the other method?

A. Well, I thought it was safer; just as safe anyway.

The WITNESS: They didn't know one bank from another, as far as I know.

Q. Mr. Myrick, will you state the nature of your employ-
63 ment by the Blakers in this business?

Objected to as immaterial.

The WITNESS: I bought their cattle for them, and I can't tell exactly how far back; it has been quite a little while I have been buying them, but not as many; I buy most of the bulk.

Q. What was the nature of your employment? State the whole thing, how you came to be employed, who employed you, and what the terms of your employment were.

A. Well, the first time that I ever had to do with them I went there

with three loads of cattle; a brother-in-law went there with one load of cattle. I guess that was it; I guess it is three years ago, the first — was, I saw this fellow. I saw him there at the Philadelphia depot. I was East with some horses; a fellow sat there with a valise in his hand, and he wanted to go over and get something to eat. He asked me
64 if I would watch his valise while he went over; I said I would, and he left it there; he came along back, and I asked him where he was going; he said to Pittsburgh to buy some cattle. I don't know as he said that first; I found it out. I said, You come home with me, I will sell you some cattle; I have got 3 or 4 loads of good cattle; he said he couldn't then, but he might be out after awhile, and I got his address, I guess. I don't know. It must have been six months after that I shipped this first load of cattle; I sent my brother-in-law through with them.

Q. They were your own cattle?

A. Yes, sir; and this Blaker sold them for me, and my brother-in-law brought back the money, and they told me they would like to have me buy them some cattle. Well, I bought—I don't know how long after that—I bought 3 loads of cattle and went
65 through with them there to their place, and they paid me for my expenses East, the actual cost, and I came home. I guess likely they had them quite a little while there—2 or 3 months, they had to winter them.

Q. That was not this operation?

A. No, sir.

Q. I want to know the terms of this employment, this series of operations commencing, you stated, about January 10, 1877?

A. I had the drawbacks for buying these cattle; if we didn't get any drawbacks they would pay me. I always got drawbacks and was pretty well paid; I would like to do it again, too, now.

Q. That was the only remuneration you obtained for your services?

A. I guess likely, perhaps, $150.00; maybe outside of that. Sometimes we didn't get any drawbacks; if we didn't get any, why they would send me sometimes some money; I don't suppose I got over $150.00.

66 Q. Were you interested in the cattle at all?

A. No, sir.

Q. You were simply buying for them?

A. Yes, sir.

Q. Did you ever give any instructions to the Blakers as to what prices they should charge for these cattle?

A. No, sir.

Q. Did you ever exercise any right over the cattle from the time they left the stock-yards?

A. No, sir; not unless I sent a man with them; I don't think I sent a man with any of these; their man from Philadelphia —, I think.

Q. Who was that man?

A. His name was Bennett.

Q. Henry Bennett?

A. Yes, sir; I won't say for certain; I don't know as he sent a man at all this last season; sometimes men we get there that can take them along.

Q. What days were these cattle mentioned in these way-
67 bills—what days were they shipped?

A. Generally shipped Wednesday.

Q. Did you know of their arrival in Philadelphia?

A. Well, not until after —; sometimes I did, yes; sometimes I had letter- from them.

Q. Did you know what time they arrived in Philadelphia?

A. They should have arrived there Sunday morning.

Q. Were these the general days on which you shipped during the time previous to this.

A. Wednesdays; we sometimes shipped Tuesdays, but very seldom; Wednesdays brought them Sunday morning; that was when they wanted them.

Q. Did you ever have anything to do with any way-bills?

A. Not that I know of.

Q. You never saw them?

A. There were way-bills, but I never had any way-bills; all I got was what I would go and get; this bill of lading from the shipping agent, that is all I had to do with.

68 Q. With regard to these bills of lading, who dictated the form of the bill of lading?

A. Mr. Otis.

Q. The cashier of the bank?

A. I think so. I told him what I wanted to do and he wrote it up. I don't know whether he wrote it or who wrote it, but he handed me a slip of paper—what I wanted for a bill of lading.

Q. Did you tell him you were buying for the Blakers?

A. I told him I was buying cattle to ship there.

Q. For the Blakers?

A. Yes, sir; I don't know as I told him who I was buying for; I won't say that I did; I was buying for parties East.

Q. You say that previous to this drafts were drawn by Blaker's telegraphing to them or their telegraphing to him?

A. Yes, sir.

Q. When you shipped cattle from the stock-yards, Mr. Myrick, did you deliver them over to anybody?

69 A. I delivered them to the Michigan Central Railroad Company.

Q. Was there any one else there to whom you gave instructions to deliver them in any way?

A. No, sir; I went right to the shipping division and told them I had so many loads of cattle and they went and sent the man after them.

Q. Did you ever point out the cattle to any one?

A. They had a man that used to point out the cattle sometimes when he was there.

Q. Who has a man?

A. This Bennett.

Q. That is what I mean. He had pointed them out to Bennett?

A. Yes, sir. Now, sometimes I would tell him and he would load them; sometimes we would get a pretty big load, and sometimes it would be a little small one and he would have to mix them up a little; I would deliver to the Michigan Central the same; I didn't stay there to see them loaded; I never loaded them.

70 Q. Were these cattle delivered to Henry Bennett?

A. No, sir.

Q. I mean was he there?

A. He was around there. I delivered the cattle to the Michigan Central Railroad Company on this bill of lading.

Q. Was Henry Bennett there at the time you delivered these; at the time these cattle went?

A. I couldn't say; he was there, around there more or less; he would go with the cattle; he was the man they employed to go with the cattle, but he never had anything to do about getting the cattle over or loading them, as far as that is concerned.

Q. You say that the first drafts you drew on the Commercial National Bank were in consequence of the telegraphs sent by the Shock and Mackson bank?

A. I guess it was the First National Bank.

71 Q. Do you know whether the Blakers, during that time when you drew—when you received notice to draw—did the Blakers have any or make any or get any collateral security?

A. I don't know anything about that.

Q. Did you receive this telegram?

Mr. LARNED: All these questions are objected to.

The WITNESS: The bank received it.

Mr. FURNESS: You went into the bank and drew the draft?

A. Yes, sir.

Q. Did you receive any orders, during the time these drafts were drawn, to draw from the Blakers as to the various purchasers which you made?

A. We always received orders how many cattle to buy; sometimes what kind. Always, every time I bought, either the man would bring back the letter stating what they wanted or they would telegraph; they most always sent a telegraph.

72 Q. When you drew did you send any notice to the Blakers to that effect?

A. No, I never did, as I know of—well, yes, I always wrote them a letter. I wrote a letter putting in a list of what the cattle cost, and of course that was notice.

Q. Did you send that letter by mail?

A. I think I used to send one by mail, and then if I had time I used to give one to the man. I know there was once we didn't get the cost of the cattle.

Q. Did you, or did you not, instruct the man as to the roads he was to go over, and so on—give him instructions?

A. Yes, sir; because I had drawbacks and I wanted to have him go over the roads I got the drawbacks on; sometimes the drawbacks were on the Canada Southern and sometimes on the Great

Western; there was some sent over the Baltimore and
73 Ohio. I don't know but there was once in a while I telegraphed them that I drew drafts on them.

Q. Please explain how the railroad company knew how you raised the money to buy these cattle with?

A. I will tell you why they knew. I suppose they knew because I told them where I got the bill of lading.

Q. You told them you wanted the bill of lading because the National Bank required it?

A. No. I say I told them that that is the way I wanted the bill of lading. I wanted the bill of lading that way; the cashier of the Commercial National Bank wrote it.

Q. You told the railroad company that?

A. Yes, sir. I guess likely they will tell you they knew all about it.

Q. Were all these bills of lading, from the beginning to the time of your drawing and attaching them to the drafts, drawn in exactly the same way as this (indicating)?

A. Yes, sir.

74 Q. All drawn in exactly the same way?

A. All the same. All the bills of lading I drew were all exactly like that. You see they made a little mistake—they gave me these bills of lading; they filled one of them a little different.

Q. You mean in the way-bills?

A. Yes, sir; so they told me up there; they were billed to J. and W. Blaker; their bank telegraphed that they would pay for the cattle; I had them wayed to them and shipped to them; that was during the first part of January, the 10th. I can't tell exactly how many times they did that. I think I always had them wayed to them and shipped to them direct if I could, but Stickney used to have me get something from the bank—a receipt for these cattle. I don't know what he did with it. I can't say exactly how this was.

Q. That has nothing to do with the Commercial National Bank?

A. No, sir.

75 Q. They never required any receipt of you, but simply mean that Stickney did?

A. Yes, sir; I had to get something.

Q. From the Commercial National Bank?

A. From the shipping clerk to show I had shipped the cattle. I expect that was all.

Q. During the time you were drawing on the telegraphic instructions from Philadelphia?

A. Yes, sir.

Q. Did you furnish the Commercial National Bank with any paper at all?

A. Yes; I had to furnish—I won't say that I furnished them more than I furnished Stickney for the loads that I bought of cattle.

Q. That was another bank?

A. Yes, sir

Q. I asked you about this bank—whether you furnished any paper at all to this bank?

A. I guess likely I gave them the receipts.

Q. Was the receipt the same kind as that paper?

76 A. No; the receipt was not the same kind.

Q. Do you remember?

A. I don't remember what it was; I know Stickney told me what to get; that is all I remember about it. I don't remember what I got from them.

Q. Can you tell that when you return to your home?

A. No, sir; if I was going to be hung this minute I can't tell you what I furnished them; I think I did something; I didn't know what it was.

Plaintiff's counsel reserves an objection to the whole series of questions in regard to Mr. Myrick's personal employment of connection with the Blakers, except as regards this one transaction.

The cross-examination may be kept open for Judge Osborne's cross-examination if he sees fit at some future date.

It is stipulated also that the signature hereto may be waived.

77 Redirect examination by Mr. LARNED:

Q. Mr. Myrick, when you got these cattle which were shipped, as evidenced by these two bills of lading in this case, did you buy them for yourself at the stock-yards?

A. Yes, sir.

Q. You dealt with parties there in your own name, did you?

A. Yes, sir.

Q. Did you get the money from Mr. Otis, the cashier?

A. Yes, sir.

Q. Did you pay it with your own check to the parties of whom you bought the cattle?

A. Yes, sir.

Q. Then you shipped the cattle, did you, and took the bills of lading?

A. Yes, sir.

Q. And you deposited the bills of lading as security?

A. Yes, sir.

Q. Did the bank know anybody but you in the transaction here?

A. No, sir; not that I know of.

78 Recross-examination by Mr. FURNESS:

Q. You are positive that the bank did not know that you were buying for the Blakers?

A. They knew I was drawing these drafts on J. and W. Blaker. I don't know as they knew what I was.

Objected to as leading.

Q. Whether, at the time this change was made, I would like you to state the whole conversation, as much as you remember of it, which led to the change from one system to the other in that case.

Objected to as totally immaterial.

Q. Were you buying for anybody but the Blakers?

A. No, sir.

Q. At the time you were drawing on the telegraphic notices from Philadelphia or the Eastern Bank to the bank here, were you buying for any one else but J. and W. Blaker?

A. No, sir.

79 Q. Did you inaugurate this system of drawing entirely or did the bank have anything to do with it?

A. Yes, sir; the bank had it done to secure them and it secured me at the same time.

Q. Did this arise merely from the suggestion of the bank that they should make this change or outside knowledge of the Commercial National Bank—this change that was made on these bills of lading?

A. Well, I think that I asked them if they would cash a bill of lading drawn up.

Q. They would wait for a telegram?

A. Yes, sir.

Q. You are very sure of that?

A. I think that is the way it was.

Q. The bank, I understand you to say, instructed you?

A. I think I went to the bank; says I: Will you cash a bill of lading and let me have this amount of money if I will get a bill of lading on this stock and sign it over to you?

80 Q. And attach the draft to it?

A. Yes, sir.

Q. And after that time you only drew in this way?

A. Yes, sir; in this way.

Q. Previous to that did J. & W. Blaker have any dealings, to your knowledge, with the bank here as to their business?

A. No, sir.

Objected to as immaterial.

PARIS M. MYRICK.

I, Frank W. Pettit, a notary public in and for the county of Cook and State of Illinois, do hereby certify that the above-named witness, Paris Myrick, appeared before me in the above-entitled cause at 69 Dearborn street, room 22, in the city of Chicago, county of Cook and State of Illinois, on the fourth day of September, A. D. 1878, and, being first duly sworn by me, gave his testimony in the above-entitled cause as a witness on behalf of the plaintiff, as

81 contained in the above depositions, by virtue of a stipulation made and entered into between the attorneys for the parties in the above-entitled cause on the said fourth day of September, A. D. 1878, by which stipulation I was authorized to take such testimony.

In witness whereof I have hereunto set my hand and attached my notarial seal this 5th day of September, A. D. 1878.

[SEAL.] FRANK W. PETTIT,
Notary Public.

Endorsed: Filed Nov. 29, 1878. Wm. H. Bradley, cl'k.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct copy of the deposition of Paris Myrick filed in said court on the 29th day of Novem-
82 ber, 1878, in the cause wherein Paris Myrick, who sues, &c., is the plaintiff, and The Michigan Central Railroad Co. is the defendant, as the same appears from the original thereof now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office, in Chicago, in said district, this 28th day of March, A. D. 1884.

[SEAL.] WM. H. BRADLEY, *Clerk.*

83 Deposition of HENRY BENNETT, of the city of Philadelphia, as follows:

I am at present agent for the sale of Chicago dress[ed] beef, and am in the employ of Paris Myrick. Our wholesale department has three stores in Philadelphia. I mean Paris Myrick has one wholesale place of business in Philadelphia and two retail places of business. I superintend the buying of the meat and look after the outside business of all three places. The wholesale place is at No. 406 North Delaware avenue and the retail places are, one 1737 Frankford avenue and the other No. 1213 Green street, corner of Ridge avenue. I reside at No. 929 North Second street. Both Julian and Wade Blaker are now in the employ of Paris Meyrick. I have been employed by Mr. Myrick since January 1st, 1878. In September, October, and November, 1877, I was in the employ of J. & W. Blaker. My employment with them began on the 12th day of September, 1877. They were dealing in stock, as drovers, at Philadelphia, at the North Philadelphia drove-yard, on the North Pennsyl-
84 vania railroad; that was their main place of business. I was their shipper, engaged by the month. There was no particular salary. I got at first $60.00 per month, but got $75 afterwards, because they were shipping largely. My duty was to receive the cattle at the U. S. stock-yards in Chicago and take care of them till they reached Philadelphia, to see to feeding and watering and proper care on the route. The cattle were unshipped twice between Chicago and Philadelphia, at Buffalo and Waverly. Sometimes we lay at Buffalo from five to eight hours; sometimes only two hours, and at Waverly about the same time. I bought no cattle myself for the Blakers. I received them from Paris Myrick, or at least I got orders from him where such and such cattle were; I mean the cattle that were to be shipped.

Question. You got such cattle as were pointed out to you as the cattle of J. & W. Blaker?

Objected to and withdrawn.

[A.] I got such cattle as were pointed out to me to be shipped.

85 Question. For whom did you get the cattle, and to whom did you deliver them?

Objected to by Mr. Bispham.

Answer. I understood that the cattle I got were for J. and W. Blaker. I never delivered them to any one in particular. I delivered them or saw them safe to the stock-yard in Philadelphia—that is, the North Philadelphia stock-yard.

Question. Who received and handled the cattle there?

Answer. The freight agent used to, or always, in fact, counted them on coming out of the cars, and after that I can't tell whose hands they went into next. Julian Blaker was nearly always about there to direct where the cattle should be put. I do not know who sold them. I made one trip a week to Chicago and back. I left Philadelphia on Sunday evening, got to Chicago Tuesday morning about 8 o'clock, got the cattle on Wednesday, generally. Set out on return trip same afternoon, reached Buffalo Friday forenoon, lay over a few hours and set out again; reached Waverly Satur-

86 day forenoon, lay there a few hours, and set out again, reaching Philadelphia Sunday morning about or between 5 and 9 a. m., and delivered the cattle to the stock-yard same day, or rather the freight agent of the North Penna. railroad did. I knew Paris Myrick, or at least had an introduction to him before going to Chicago. I was introduced to him at Newtown, Penna., by J. D. Blaker.

Question. What was said by John D. Blaker at the time of the introduction?

Objected to by Mr. Bispham.

Answer. He introduced him to me as being at their place with a lot of horses for sale. He told me he had come from the West and brought the horses from the West—from Chicago. I was then working on a farm with Harrison Rice. I can't tell the date. I think it was in May, 1877.

Question. What were your instructions from J. & W. Blaker when you first went to Chicago after cattle?

Objected to by Mr. Bispham.

Answer. I was to go to the U. S. stock-yard and there find

87 Myrick and he would have the cattle already bought; also he would direct me what cars to put them in and what road to come over. I always followed those instructions from first to last. I always came over the same roads with the cattle—that is, the Michigan Central from Chicago to Detroit, the Great Western, through Canada, over the suspension bridge, to Buffalo; or, rather,

I am mistaken, it was the International bridge at Black Rock, near Buffalo, then the Erie railroad to Waverly; then the Lehigh Valley railroad to Bethlehem, and then the North Penna. railroad to Philadelphia. Mr. Myrick never told me how he was paid or what interest he had in the business during the time I was traveling with the cattle. He never made any statements about these matters during that time.

Question. Has he made any statements to you since about the business?

Objected to by Mr. Bispham.

88 Answer. Yes, sir. He told me since they stopped shipping that he never got anything for buying the last four lots of cattle; that he was to have the drawbacks for buying; by drawbacks, I mean that the railroads made allowances to shippers of freight after the freight bills were paid; for the last four lots Mr. Myrick got no such allowances. I think I heard him say he got some drawbacks before that, but I don't know the amount. I understood, from what he said, that in the early part of the season the drawbacks were about thirty dollars a car. No other person traveled for the Blakers to Chicago in my line but myself that I know of. I don't know as I can tell the days I left Chicago on my last two trips, but I think it was on Wednesday. I know it was a Wednesday, but can't tell the date. By referring to my diary or cash account of money received for travelling expenses from J. & W. Blaker, I find I left Philadelphia for my two last trips on the 4th and 11th days of November, 1877, and therefore left Chicago on the return trips with

89 the cattle on 7th and 14th of Nov., 1877; those were the last trips I made and brought cattle. I made a trip out afterwards, but brought back no cattle. I left Philadelphia on Sunday, the 18th of November, 1877, with orders to bring on twelve loads of cattle, but did not get them and returned without them.

I arrived in Philadelphia on Nov. 11th with the cattle that left Chicago on the 7th. I think Julian Baker was at the drove-yard on the 11th of Nov., 1877; one of the Blakers certainly was there.

I arrived in Philadelphia on the 18th of Nov. with the cattle that left Chicago on the 14th. It was Sunday morning. Neither of the Blakers was present that day when the cattle arrived. I saw Julian, I think, about 11 o'clock a. m. of that day. I am certain I did see him at the drove-yard that day.

Cross-examined by counsel for plaintiff:

I can't tell the exact date when Paris Myrick went into the Chicago dress-beef business. It was about the 15th of December, 1877.

90 I can't tell exactly how long he has had these stores in Philadelphia. He built the wholesale store on North Delaware avenue about March 1878, and I think he started the store on Frankford road about April 1st, 1878. I always saw Mr. Myrick at Chicago when I went after cattle. I never met him in Philadelphia whilst I was acting as shipper. He was at Chicago, as far as I know,

during all that period. I was not present when the shipments of Nov. 7th and 14th were purchased at Chicago. I had nothing whatever to do with the purchase. I don't know of whom the cattle were bought, who paid the money, how much it was, or where the money came from. I don't know who got the bills of lading for those cattle. I had nothing to do with that part of the business. I did not see the bills of lading, to the best of my recollection. I don't know of my own knowledge whether Paris Myrick or any other parties in Chicago had any interest in those cattle, or, if any, what that interest was. Sometimes we ran the cattle onto the cars as soon
91 purchased; sometimes they remained at the U. S. drove-yard about twenty-four hours. All I had to do with the cattle was to see that they were cared for on the trip to Philadelphia after they were put on the cars. I had nothing to do with putting them on the cars. My business was simply to look after the well-being of the cattle on the trip and nothing else. I did not receive nor have charge of any way-bills, or any other papers relating to the cattle at Chicago or at any other point along the route.

I don't know who had charge of such papers. It wasn't my business. I saw to feeding the cattle after they were turned into the North Philadelphia drove-yard; that was all I had to do with them. I had nothing to do with the sale or delivery of the cattle. I remained in Philadelphia from about Sunday morning at 11 o'clock till about 8 o'clock in the evening of the same day, then I
92 started on my trip to Chicago. I had nothing to do with paying the freight on any of the cattle. I was at the North Philadelphia drove-yard most of the day of Sunday, Nov. 11th, 1877. My business required me to be there. I saw Mr. Julian Blaker there that day. He was there from about 11 a. m. till 6 p. m. of that day.

I put up at the hotel in or near the stock-yard. I know nothing about the disposition of the cattle after Sunday evening, as I left the yard then on my return trip, after the shipment of Nov. 14, 1877. I also left Philadelphia on Sunday evening, Nov. 18th, 1877. I put up at the same place and was about the drove-yard all of Sunday. I saw Julian Blaker at the yard that day also. When I was in Chicago I received my instructions from Mr. Myrick about the shipment of cattle. Mr. Julian and Wade Blaker are now employed by Mr. Myrick; Julian as clerk in the store on Frankford road, and Wade is superintending the wholesale place and traveling through the markets. When I said the cattle were unshipped I
93 meant they were taken from one set of cars and put in the yard for food and water and then placed on the cars again; sometimes in the same cars, sometimes in others.

Re-examined by Mr. WISTAR:

I know nothing about the existence of any bills of lading, as I was never informed about them—as to any of the shipments of cattle; the instructions I got from Mr. Myrick at Chicago, that I spoke of in reply to Mr. Bispham's question, were the number of cattle to ship and the number of cars they were to be put into and what

roads to go over. Paris Myrick now resides in Illinois, in Kensington, Cook Co., of that State. After I received the instructions from Paris Myrick, which I have stated, with reference to the number of cattle to be shipped, the number of cars they were to be shipped in, and the road they were to go over, I never received any other or further instructions from him in regard to them; after I re-
94 ceived the cattle on two occasions I received telegrams from J. &. W. Blaker with regard to them; these telegrams were not in reference to the two last lots of cattle; the telegrams were received at the Erie stock-yard, Buffalo; the instructions were to ship the cattle on the narrow-gauge cars at Buffalo, and run them through Waverly without stopping. I did this.

Objected to by Mr. Bispham.

Recross-examined:

The instructions I got from Mr. Myrick at Chicago covered all my duties, and no other instructions were necessary.

(Sig.) HARRY BENNETT.

No other witnesses being produced, the taking of depositions herein is adjourned till Thursday, June 27th, 1878, at 11 o'clock a. m.

(Sig.) JAS. H. STEVENSON, *Com'r.*

95 Deposition of WILSON W. SELL, of the city of Philadelphia, as follows:

I reside at 533 Butler street, in the city of Philadelphia. I am a station agent at the drove-yard station on the North Pennsylvania railroad, in the city of Philadelphia, and I am in the employ of the North Pennsylvania Railroad Company, and have been there in that capacity since October, 1876, when the station was first opened for business. As such station agent all cattle sent over the North Pennsylvania railroad were received by me; I mean those received at that station; when received I delivered them to the stock-yard company. I know J. & W. Blaker. They were in the cattle business from October, 1876, to November, 1877. They dealt at the North Philadelphia drove-yard. I received cattle for them during all that period and delivered them to the stock-yard company. I received the way-bills for the cattle from the conductor of the train generally.

96 (Eighty-six way-bills shown to witness by counsel for defendant.)

These are way-bills of cattle delivered by me to the stock-yard company for J. & W. Blaker between August 11th, 1877, and November 3rd, 1877.

Mr. Wistar now offers these way-bills in evidence.

Mr. Bispham objects to these documents as irrelevant and otherwise objectionable, and also objects to any examination in reference to the same.

These way-bills are marked by the commissioner "Jas. H. Stevenson," and numbered from one to eighty-six, inclusive, and it is agreed

by counsel for plaintiff and defendant that the same shall be received in evidence as if attached to this commission, subject to the objection heretofore made by Mr. Bispham.

Bills Nos. 1, 2, and 3 shown to witness. They are dated August 11th, 1877, and consigned to J. & W. Blaker. The cattle called for by those bills were delivered to the stock-[yard] company August 12th, 1877. I find this by reference to my receipt-book, by which it appears that the cattle were delivered to the stock-yard on account of J. Blaker.

97 Bills Nos. 4, 5, 6, & 7 shown to witness, dated August 30th, 1877; Mansfield to Philadelphia; they are to the order of P. Myrick; notify J. & W. Blaker. The cattle in these bills were delivered to the stock-yard for J. & W. Blaker on September 2nd, 1877, as appears by the superintendent's receipt of that date.

Bills Nos. 8, 9, 10 shown [to] witness, dated August 18th, 1877; Waverly to Philadelphia, to the order of Paris Myrick; notify G. W. Blakey. They are for forty-nine head of cattle—three car-loads. The cattle were delivered August 19th, 1877, to the stock-yard comcompany for J. & W. Blaker. I also delivered on that day two hundred and twenty-three sheep in cars Nos. 2526 & 2512 to the stock-yard company for J. & W. Blaker.

Bills Nos. 11, 12, 13, 14, & 15 shown witness, dated September 8th, 1877, Waverly to Philadelphia, for five car-loads of cattle consigned to order of P. Myrick; notify J. & W. Blaker; the cattle were delivered on the 9th of September, 1877, to the stock-yard company for J. Blaker, as appears by my receipt. I also delivered two

98 more car-loads, P. & N. Y., Nos. 2541 & 2584, same day.

Bills Nos. 16 to 21, inclusive, shown witness, dated September 15th, 1877, for six car-loads of cattle; five of these to the order of Paris & Myrick; notify J. & W. Blaker; and one, No. 18, to order of Paris & Myrick; notify J. W. Blaker. These were delivered to the stock-yard company September 16th, 1877, for J. Blaker, as appears by the receipt of the superintendent.

Bills Nos. 22 to 25, inclusive, shown witness, dated Sept. 22, 1877; four car-loads of cattle, three of them consigned to Paris Myrick; notify J. & W. Blaker; and one, No. 25, to Paris Myrick; notify J. & W. Blaker. The cattle were delivered Sept. 23rd, 1877, to the stock-yard company for J. Blaker.

Bills Nos. 26 to 33, inclusive, shown witness, dated Sept. 29th, 1877; No. 26 consigned to Paris & Myrick; notify J. W. Blaker; No. 27, to Paris & Myrick; notify J. W. Blaker; the rest to Paris & Myrick; notify J. & W. Blaker. These were for eight car-loads of cattle which were delivered to the stock-yard company Sept. 30th, 1877, for J. Blaker.

99 Bills Nos. 34 to 40, inclusive, shown witness, dated Oct. 6th, 1877, for eight car-loads of cattle, seven of these consigned to the order of P. Myrick—notify J. & W. Blaker—and No. 34 & ½, to order of P. Myrick—notify J. W. Blaker; these were delivered Oct. 7th, 1877, to the stock-yard company for J. Blaker.

Bills No. 41 to 50, inclusive, shown witness, dated Oct. 13th, 1877, for ten car-loads of cattle, all but Nos. 42 & 48 consigned to the

order of P. Myrick; notify J. W. Blaker. Nos. 42 to 48 to the order of H. Myerick; notify J. & W. Blaker. The cattle were delivered to the stock-yard Oct. 14th, 1877, for J. Blaker. There were twelve car-loads delivered, according to the receipt, on that date, but I only found way-bills for ten.

Bills Nos. 51 to 62, inclusive, shown witness, dated Oct. 20, 1877, for twelve car-loads of cattle, all to the order of Paris & Myrick; nine of them notify J. W. Blaker, and three of them notify J. & W. Blaker. The cattle were delivered Oct. 21, 1877, to the stock-yard company for Julian Blaker.

100 Bills Nos. 63 to 73, inclusive, shown witness, dated Oct. 27, 1877, for eleven car-loads of cattle; six loads to the order of Paris Myerick; notify J. W. Blaker; three loads to the order of Paris & Myerick; notify J. & W. Blaker; and one load to the order of Paris & Myrick; notify J. & W. Blaker; and one load to the order of Paris Myrick; notify J. & W. Blaker. These cattle were delivered to the stock-yard company Oct. 28, 1877, for J. & W. Blaker.

Bills Nos. 74 to 85, inclusive, shown witness, dated Nov. 3, 1877; for twelve car-loads of cattle, all consigned to the order of P. Myerick; notify J.—W. Blaker. The cattle were delivered to the stock-yard company November 4, 1877, for J. & W. Blaker.

Note.—One of the bills was numbered 34 & ½, making the number of all appear but 85, whereas there are 86 bills.

The said eighty-six way-bills are now shown to the witness, and Mr. Wistar asks the following:

Question. Are you able, from an examination of these bills, to state where the cattle called for in them were consigned from?

101 Answer. All with the exception of car Erie, 30466, "Jas. H. Stevenson." No. 1 came from Chicago, I think—the cattle called for in the excepted bill from Buffalo.

Twelve way-bills, dated Nov. 10, 1877, shown witness for twelve car-loads of cattle, consigned to P. Myrick; notify J. W. Blaker.

Question. To whom were the cattle called for in these bills delivered and when?

Answer. To the stock-yard company for J. & W. Blaker, Nov. 11th, 1877; there were two hundred and two head of cattle. They came from Chicago.

The above way-bills are marked "Jas. H. Stevenson," Nos. 87 to 98, inclusive. They are offered in evidence, and are hereto attached.

Thirteen way-bills, dated Nov. 17th, 1877, shown witness for thirteen car-loads of cattle, eleven of them consigned to Paris Myrick and two of them to Paris & Myerick.

The above bills are marked "Jas. H. Stevenson," Nos. 99 to 111, inclusive. They are offered in evidence, and are hereto attached.

Question. To whom were the cattle called for in these bills delivered and when?

102 Answer. To the stock-yard company for J. & W. Blaker, Nov. 18, 1877; there were two hundred and one head of cattle; the words "ac. J. & W. Blaker" upon these way-bills under the name of the consignee are in my handwriting, and were not

upon the way-bills when received by me. I put them on at the stock-yard. I am telegraph operator for the North Pennsylvania Railroad Company at the drove-yard station, and am also manager and operator for the Western Union Telegraph Company at the same station.

J. & W. Blaker sent telegrams to Paris Myrick on Nov. 5th, 1877—one to U. S. yards, Illinois, and the other, a duplicate, to Kensington, Cook county, Illinois—through me from the drove-yard station at Philadelphia. They were sent over the Western Union line.

Two orders produced, hereto attached, marked Jas. H. Stevenson, Nos. 112 & 113. Witness says I wrote these orders at the request of Julian Blaker on the day of their date.

Question. When were the cattle referred to in these telegrams received?

103 Answer. All I know is that the first lot of cattle received after that telegram was on Nov. 11th, 1877. Those were the twelve loads of cattle—two hundred and two head—which I have before spoken of as having handed over to the stock-yard company, for J. & W. Blaker, on the 11th of November, 1877.

Paper marked "Jas. H. Stevenson," No. 114, shown witness, which is hereto annexed.

This is the regular stock report received by me from Waverly, by telegraph, Nov. 10, 1877. This report includes the twelve carloads of cattle which I have spoken of and other cattle sent from Waverly that day. The letters "B. H." signed to the report are those of "B. Hayden," the agent of the Lehigh Valley Railroad Company at Waverly.

Another order produced, marked "Jas. H. Stevenson," No. 115, are hereto attached. Witness says: This is an order which Mr. Julian Blaker sent to Paris Myrick, Kensington, Cook county, Illinois, by telegraph, for twelve loads of cattle, in Nov. 12, 1877.

I did not write this order; it looks like the writing of
104 Julian Blaker. The "sig." written in front of Julian Blaker's name was written by the boy, I think; I did not write it. I cannot say whether I was present when the order was written. I am familiar with Julian Blaker's writing. This message was sent from the drove-yard station; this is the original order.

Paper marked "Jas. H. Stevenson," No. 116, shown witness, and hereto attached, dated Nov. 17, 1877.

Witness says: I wrote this message and the boy wrote over it, and I suppose he sent it to B. Hayden, Waverly, New York. When I say "wrote over it" I mean that my writing was not very plain, and the boy traced over it, making it plainer. I found it among the records at the office of the messages sent.

Paper shown witness marked "Jas. H. Stevenson," No. 117, dated Nov. 17, 1877, and hereto attached.

Witness says: This is the answer to the telegram above spoken of received from B. Hayden Nov. 17th, 1877.

Question. What was the occasion of your sending the telegram No. 116?

105 Answer. Mr. Julian Blaker asked me to ask Waverly office if his cattle had passed. I think it was about the middle of the afternoon of a Saturday. Wade Blaker was at the yards on the 19th of November, 1877. I don't recollect having seen him on the 17th. I think I notified Julian Blaker of the answer I had received from Waverly. I notified him through the boy, I think. These are all the telegrams I have in reference to these two shipments of Nov. 10th and 19th, 1877. I know Harry Bennett. He was shipper for the Blakers—that is, he had charge of the cattle from Chicago, I suppose, to Philadelphia, and traveled with them and cared for them. It is customary for shippers of cattle to send a man with them to care for them. Mr. William Harris, Jr., was the superintendent of the stock-yard company from October, 1876, to Nov. 19th, 1877. His assistant was Thomas Harvey. These are the same gentlemen who have been examined here. I know Paris Myrick and also Julian and Wade Blaker. I was introduced to Paris Myrick either

106 the latter part of 1876 or the early part of 1877, at the drove-yard station in my office. I saw him there that once, and afterwards he was stopping at the yard several days, when he had some horses there, about April 9th, 1877.

Question. Did you see him while at the yard exercise any *exercise any* ownership or control of any cattle delivered to the stock-yard company on ac. of J. Blaker or J. & W. Blaker, as far as you know?

Answer. He did not, nor did I ever see any letters or instructions from him on the subject of any sort. At the first introduction to Mr. Myrick, in the last of 1876 or first part of 1877, I was introduced by Julian Blaker to Mr. Myrick, Mr. Julian Blaker saying: This is our Chicago buyer. The words he used were: "This is Mr. Paris Myrick, our Chicago buyer." Wade Blaker was not present; nobody but Julian Blaker, Paris Myrick, and myself. We were in the temporary station we had at that time, a sort of building used as a signal-box, in which I transacted the business of the office and received and sent messages. I became acquainted with Julian

107 and Wade Blaker in the latter part of 1876. They were in the cattle business at the North Philadelphia drove-yard.

WILSON W. SELL cross-examined by counsel for plaintiff:

Question. From whom did you get the way-bills from No. 87 to 111, inclusive, being those for shipments of Nov. 10th and 17th, 1877?

Answer. I think from the conductors of the stock train. The shipment of Nov. 10, 1877, was in one train; there was but one conductor with the train. I don't know his name; as to shipment of Nov. 17th, there were twelve cars in one train and one in another. I do not remember the conductors' names on those trains; generally the way-bills are delivered to me by the conductors of the stock trains, and I think this was done in the cases just spoken of. I suppose the conductors get the way-bills from the agent at Bethlehem. I don't know whose handwriting the body of the bill is in; it is done at the Waverly office, by whom I don't know. The Waverly

office belongs to the Lehigh Valley railroad, and these way-
108 bills are issued from that office. I suppose the conductors of the stock trains get them from the Waverly office; the cattle mentioned in these way-bills came from Chicago. I think that the cattle called for in these way-bills came in two sets of trains—that is, the cattle are changed once on the road; the trains are not through trains; the change takes place at Buffalo, I think. I have been connected with the railroad almost eight years; for about a year and six months I have been familiar with the method of shipping cattle over these roads; when the consignor delivers cattle to be shipped I suppose somebody gets bills of lading or receipts or vouchers of some kind. I suppose they get receipts, but they are not shown to me. I have forwarded local freight to be shipped over the North Pennsylvania railroad from the drove-yard station. I don't know whether when the trains leave Chicago the conductors are furnished with the way-bills or other documents in reference to the cattle. I am not able to explain the method of ship-
109 ping cattle from Chicago and Philadelphia, having reference to the papers that pass between the different parties having charge of them, except what happens between Waverly and the drove-yard station—I mean that when I receive cattle at the drove-yard station, I receive them as the agent of the company.

Question. You have stated that you delivered the cattle received by you, as the agent of the North Pennsylvania Railway Company, to the stock-yard company. What authority had you for so doing?

A. By running the cars on the stock-yard siding, I should think, would be enough authority to show that the cattle belonged there. I took the receipt of the stock-yard company for the cattle in my book, which is present. It is signed by Wm. Harris, Jr., superintendent. The words "J. & W. Blaker" on the receipt mean that the cattle mentioned therein were delivered for J. & W. Blaker to the stock-yard company. They were delivered to the stock-yard company for J. & W. Blaker. The "numbers" under the
110 name J. & W. Blaker refer to the cars in which the cattle were. The word "Erie" is the name on the car; it is the kind of car. The name of J. & W. Blaker in the receipt of Nov. 11th, 1877, is in my handwriting. I think their names are upon the way-bill, and that I took them from there. By looking at way-bills Nos. 87 to 98, inclusive, I find that the name is J. W. Blaker and not J. & W. Blaker. I suppose I took the name Blaker from the way-bill and put it in the receipt.

Question. Who receipted for the cattle included in the shipment of Nov. 18th, 1877?

Answer. Wm. Harris, Jr., superintendent, per "H." "H." means Harvey, who was assistant superintendent at that time. The marks on this receipt are J. & W. Blaker; it is in my handwriting. Mr. Blaker told me to make out all the bills and receipts in his name; I mean Julian Blaker; that is the reason why I put the words "J. & W. Blaker" in the receipts. I put those words in the way-bill as a memorandum. The words J. & W. Blaker appear in all the way-bills of Nov. 17, 1877, being the way-

bills Nos. 99 to 111, inclusive, and they are all in my
111 handwriting. I can't say whether I wrote the words "J. & W. Blaker" first in the receipt or in the way-bills; no one told me to write these words in the way-bill; no one instructed me to put them in. I did not know Julian and Wade Blaker before they began to trade at the stock-yard; before I came to the drove-yard station I was [for] a month night operator at Fort Washington—that is, telegraph operator at night; before that I was station agent at Bingen station for about three years. I never knew the Blakers during that time. I saw them occasionally at the stock-yard. Julian boarded at the hotel there, and I saw Wade every market day. I know nothing of their financial condition. I never made any inquiries about it. When I delivered those two lots of cattle to the stock-yard for the Blakers the two receipts produced here were the only ones I took. I did not ask for any other receipts. I did not ask for any bills of lading to be produced or anything of the kind; as soon as the cars were put upon the side track
112 the cattle were unloaded immediately. I don't know whether the "B. Hayden," to whom I telegraphed to Waverly, gave the way-bill or not. He was the agent at that station. No other telegrams than those produced were received or sent by me in relation to those two lots of cattle. I keep the telegraph orders of each month in separate packages in my office; those here produced were taken from one of those packages; this paper, which I now produce, is a correct copy of the delivery receipts of which I have spoken in my examination and cross-examination. Paper marked Jas. H. Stevenson, No. 116, and hereto attached.

Re-examined by counsel for defendant:

According to the marks on the way-bills of Nov. 10, 1877, Nos. 87 to 98, inclusive, the cattle mentioned therein came by the way of the Michigan Central railroad, the Great Western railroad, the Erie railway, Lehigh Valley railroad, and the North Pennsylvania railroad. The shipment of Nov. 17, 1877, way-bills Nos.
113 99 to 111, inclusive, came over the same railroads. I think I could get, if requested, the names of the freight conductors who delivered to me the way-bills of Nov. 10th and 17th, 1877, and the cattle called for by those bills. The letters "O K, W. W. S." upon all the way-bills produced, Nos. 1 to 111, inclusive, I put there. They signify that I have taken a record of the way-bills on my books and received the cattle therein called for. All cattle that came down the North Pennsylvania railroad to the drove-yard I delivered to the stock-yard company, unless otherwise ordered; I don't know that I ever received orders to deliver to anybody else.

Question. Did you ever ask for or receive any bills of lading for cattle delivered at the stock-yard?

Answer. I have, but not till after Nov. 17, 1877. There was nobody transacting business under the name of J. W. Blaker at the drove-yard station at any time.

Recross-examined by counsel for plaintiff:

I have asked for and received bills of lading for cattle
114 delivered since Nov. 17, 1877. This was not of my own motion, but under instruction from Mr. Clark and Mr. Grafly. Mr. Clark is general agent of the north Pennsylvania railroad. Mr. Grafly is through freight agent for the same company. The instructions were general, but in one particular case I got special instructions. I receive freight for cattle delivered at the stock-yard from the stock-yard company weekly. The receipts for freight are given by me in a book kept by the stock-yard company. Mr. Harris, superintendent of the stock-yard company, paid me for the two shipments of Nov. 11th and 18th, 1877, by check—I mean he paid me the freight for them. The dates on the way-bills are Nov. 10th and 17th, and those on the receipts are Nov. 11th and 18th.

(Sig.) WILSON W. SELL.

No other witnesses being produced, the taking of depositions herein is adjourned till Wednesday, June 19, 1878, at 10 o'clock a. m.

(Sig.) JAS. H. STEVENSON, *Com'r*,

115 OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
WEDNESDAY, *June 19th*, 1878.

Counsel for the plaintiff then offered in evidence and read to the jury two telegrams, as follows:

116 Form No. 45.

The Western Union Telegraph Company.

Night message.

The business of telegraphing is liable to errors and delays, arising from causes which cannot at all times be guarded against, including sometimes negligence of servants and agents whom it is necessary to employ. Errors and delays may be prevented by repetition, for which during the day half price extra is charged in addition to the full tariff rates.

The Western Union Telegraph Company will receive messages, most for transmission between stations in the United States east of the Mississippi river, to be sent without repetition during the night, at delivery not earlier than the morning of the next ensuing business day, at reduced rates, but in no case for less than one-half the usual rates, on the express condition that the sender will agree that he will not claim damages for errors or delays or for non-delivery of such messages happening from any cause beyond a sum equal to ten times the amount paid for transmission, and that no claim for damages shall be valid unless presented in writing within thirty days after sending the message.

Messages will be delivered free within the established free-delivery

limits of the terminal office. For delivery at a greater distance a special charge will be made to cover the cost of such delivery, the sender hereby guaranteeing payment thereof.

The company will be responsible to the limit of its lines only for messages destined beyond, but will act as the sender's agent to deliver the message to connecting companies or carriers, if desired, without charge and without liability.

WILLIAM ORTON, *President.*
A. R. BREWER, *Secretary.*
THOS. T. ECKERT,
General Manager.

James H. Stevenson. No. 112.

Send the following night message, subject to the above terms, which are agreed to:

(7) 5, 1877.

To Paris Myrick, U. S. y'ds, Ills.:

Ship fourteen loads cattle to-morrow or next day; three or four loads heavy cattle; two Colorado.

16.—P'd. J. & W. BLAKER.

U. S., 4. S. 5 K., 48.

☞ Read the notice and agreement at the top. ☜

Form No. 2.

The Western Union Telegraph Company.

All messages taken by this company are subject to the following terms:

To guard against mistakes or delays the sender of a message should order it repeated—that is, telegraphed back to the originating office for comparison. For this one-half the regular rate is charged, in addition. It is agreed between the sender of the following message and this company that said company shall not be liable for mistakes or delays in the transmission or delivery or for non-delivery of any unrepeated message, whether happening by negligence of its servants or otherwise, beyond the amount received for sending the same, nor for mistakes or delays in the transmission or delivery or for non-delivery of any repeated message beyond fifty times the sum received for sending the same, unless specially insured, nor in any case for delays arising from unavoidable interruption in the working of its lines, or for errors in cipher or obscure messages; and this company is hereby made the agent of the sender without liability to forward any message over the lines of any other company when necessary to reach its destination.

Correctness in the transmission of message to any point on the lines of this company can be insured by contract in writing stating agreed amount of risk and payment of premium thereon at the following rates, in addition to the usual charge for repeated messages,

viz., one per cent. for any distance not exceeding 1,000 miles and two per cent. for any greater distance. No employee of the company is authorized to vary the foregoing.

The company will not be liable for damages in any case where the claim is not presented in writing within sixty days after sending the message.

NORVIN GREEN, *President.*
A. R. BREWER, *Secretary.*
THOS. T. ECKERT,
General Manager.

Jas. H. Stevenson. No. 110.

Send the following message, subject to the above terms, which are agreed to:

(6) N. P. D. Y'DS, PA., *Nov.* 5, 1877.

To Paris Myrick, Kensington, Cook Co., Ills.:

Ship fourteen loads cattle to-morrow or next day; three or four loads heavy cattle; two Colorado.

16.—P'd. J. & W. BLAKER.

U. S., 4. 3 K., 62.

☞ Read the notice and agreement at the top. ☜

117 Also way-bills dated November 10th, marked "way-bill of merchandise transported by Lehigh Valley R. R. Co. and North Penn. R. R. Co," for first lot of cattle; also way-bills for November 17th, 1877, for second lot of cattle; also receipts of the Drove-Yard Association; also other way-bills, the said receipts & way-bills being as follows:

118 Form 24—L. "*Jas. H. Stevenson.*" *No.* 87. *Joint Way-Bill.* 381.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov'r 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30463	P. Myrick. Notify J. W. Blaker.	18 cattle, rec.	20,000	------	------	------	------	15 75	----	$31 50	21 86	Buffalo.

E., 10.93; L. V. & N. P., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30463. Philad'a.

119 Form 24—L. "*Jas. H. Stevenson,*" *No.* 88. *Joint Way-Bill.* 380.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30483	P. Myrick. Notify J. W. Blaker.	16 cattle, rec.	20,000	------	------	------	------	15 75	----	31 50	21 86	Buffalo.

E., 10.93; L. V. & N. P., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30483. Philad'a.

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120 Form 24—L. *"Jas. H. Stevenson." No. 89. Joint Way-Bill.* 282.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30484	P. Myerick. Notify J. W. Blacker.	18 cattle, rec.	20,000					15 75		31 50	21 86	Buffalo.

E., 10.93; So. & W., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30484. Philad'a.

121 Form 24—L. *"Jas. H. Stevenson." No. 90. Joint Way-Bill.* 383.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30486	P. Myerick. Notify J. W. Blaker.	16 cattle, rec.	20,000					15 75		31 50	21 86	Buff.

E., 10.93; L. V. & N. P., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30486. Philad'a.

122 Form 24—L. *"Jas. H. Stevenson."* *No.* 91. *Joint Way-Bill.* 384.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30480	P. Myerick. Notify J. W. Blaker.	17 cattle, rec.	20,000					15 75		31 50	21 86	Buf'o.

E., 10.93; So. W., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30480. Philad'a.

123 Form 24—L. *"Jas. H. Stevenson."* *No.* 92. *Joint Way-Bill.* 385.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30477	P. Myerick. Notify J. W. Blaker.	17 cattle, rec.	20,000					15 75		31 50	21 86	Buf'o.

E., 10.93; L. V. & N. P., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30477. Philad'a.

THE COMMERCIAL NATIONAL BANK OF CHICAGO.

124 Form 24—L. *"Jas. H. Stevenson." No. 93. Joint Way-Bill.* 386.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30498	P. Myerick. Notify J. W. Blaker.	17 cattle, rec.	20,000					15 75		31 50	21 86	Buf'o.

E., 10.93; L. V. & N. P., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30498. Philad'a.

125 Form 24—L. *"Jas. H. Stevenson." No. 94. Joint Way-Bill.* 387.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30485	P. Myerick. Notify J. W. Blaker.	16 cattle, rec.	20,000					15 75		31 50	21 86	Buf'o.

E., 10.93; L. V. & N. P., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30485. Philad'a.

126 Form 24—L. *"Jas. H. Stevenson." No. 95. Joint Way-Bill.* 388.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30493	P. Myerick. Notify J. W. Blaker.	16 cattle, rec.	20,000	------	------	------	------	15 75	----	31 50	21 86	Buf'o.

E., 10.93; L. V. & N. P., 15.75. Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30493. Philad'a.

127 Form 24—L. *"Jas. H. Stevenson." No. 96. Joint Way-Bill.* 387.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30496	P. Myerick. Notify J. & W. Blaker.	17 cattle, rec.	20,000	------	------	------	------	15 75	----	31 50	453 19	Buf'o.

M. C. ------ 431 33
E. ------ 10 93
So. W. ---- 15 45 21 86

Copy. Chicago thro', 58c. [Endorsed:] Erie. 30496. Philad'a.

THE COMMERCIAL NATIONAL BANK OF CHICAGO.

128 Form 24—L. *"Jas. H. Stevenson."* *No. 97.* *Joint Way-Bill.* 390.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30465	P. Myerick. Notify J. & W. Blaker.	17 cattle, rec.	20,000					15 75		$31 50	$369 61	Buf'o.

G. W. $304 75
E. 10 93
L. V. & N. P. 15 75 21 86

Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30465. Philad'a.

129 Form 24—L. *"Jas. H. Stevenson."* *No. 98.* *Joint Way-Bill.* 391.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d Class.	Weight. 3d Class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30489	P. Myerick. Notify J. & W. Blaker.	17 cattle, rec. Tan bark $12 00 Feed 10 50 Adv's 17 62	20,000					15 75		31 50	61 98	Buf'o.

Erie 10 93
L. V. & N. P. 15 75 21 86

Copy. O K. W. W. S. Chicago thro', 58c. [Endorsed:] Erie. 30498. Philad'a.

130 Form 24—L. 517. *"Jas. H. Stevenson."* *No. 99.* *Joint Way-Bill.* 682.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 10th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30482	Paris Myerick. Ac. J. & W. Blaker.	14 cars cattle	20,000					15 75		31 50	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Copy. Ahead. O K. W. W. S. Chicago thro', 58c. p'r 100.

131 Form 24—L. 516. *"Jas. H. Stevenson."* *No. 100.* *Joint Way-Bill.* 678.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30476	Paris Myerick. Ac. J. & W. Blaker.	16 cattle, M. or L. T. bark $13 00 Feed 18 81 Adv's 18 00	20,000					15 75		31 50	321 80	Buf'o.

M. C. 255 18
Erie 10 93
L. V. & N. P. 15 75

Copy. Ahead. O K. W. W. S. Chicago thro', 58c. p'r 100.

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THE COMMERCIAL NATIONAL BANK OF CHICAGO.

132 Form 24—L. 515. *Jas. H. Stevenson. No.* 101. *Joint Way-Bill.* 674.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30492	Paris and Myerick. Ac. J. & W. Blaker.	Car cattle, 15, M. or L.	20,000	------	------	------	------	15 75	----	31 50	221 86	Buf'o.

M. C. ---------- 200 00
21 86
Erie ---------- 10 93
L. V. & N. P. ----- 15 75

Copy. Ahead. O K. W. W. S. Chicago thro', 58c. p'r 100 lbs.

133 Form 24—L. 515. *Jas. H. Stevenson. No.* 102. *Joint Way-Bill.* 672.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie	Paris Myerick, Philad'a, Penn'a. Ac. J. & W. Blaker.	Car cattle, 16, M. or L.	20,000	------	------	------	------	15 75	----	31 50	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Copy. Ahead. O K. W. W. S. Chicago thro', 58c. per 100.

134 Form 24—L. 515. *Jas. H. Stevenson. No.* 103. *Joint Way-Bill.* 670.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30493	Paris Myerick, Philad'a, Penn'a. Ac. J. & W. Blaker.	Car cattle, 16, M. or L.	20,000	------	------	------	------	15 75	----	31 50	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Copy. Ahead. O K. W. W. S. Chicago thro', 58c. per 100.

135 Form 24—L. 515. *Jas. H. Stevenson. No.* 104. *Joint Way-Bill.* 675.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30477	Paris Myerick. Ac. J. & W. Blaker.	15 cattle, M. or L. ...	20,000	------	------	------	------	15 75	----	31 50	21 86	Buff'o.

Erie, 10.93; L. V. & N. P., 15.75. Copy. Ahead. O K. W. W. S. Chicago thro', 58c. per 100. Via M. C., G. W., Erie, L. V. & N. P. roads.

136 Form 24—L. 515. *Jas. H. Stevenson. No.* 105. *Joint Way-Bill.* 673.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30484	Paris Myerick, Philad'a, Penn'a. Ac. J. & W. Blaker.	Car cattle, 16, M. or L.	20,000	------	------	------	------	15 75	----	31 50	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Copy. Ahead. O K. W. W. S. Chicago, 58c. per 100.

137 Form 24—L. 515. *Jas. H. Stevenson. No.* 106. *Joint Way-Bill.* 671.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie	Paris Myerick, Philad'a, Pa. Ac. J. & W. Blaker.	Car cattle, 16, M. or L.	20,000	------	------	------	------	15 75	----	31 75	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Copy. Ahead. O K. W. W. S. Chicago thro', 58c. per 100.

138 Form 24—L. 515. *Jas. H. Stevenson. No.* 107. *Joint Way-Bill.* 676.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30483	Paris Myerick. Ac. J. & W. Blaker.	15 cattle, M. or L....	20,000	------	------	------	------	15 75	---	31 50	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Copy. Ahead. O K. W. W. S. Chicago thro', 58c. per 100.

139 Form 24—L. 516. *Jas. H. Stevenson. No.* 108. *Joint Way-Bill.* 677.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30486	Paris Myerick. Ac. J. & W. Blaker.	16 cattle, M. or L....	20,000	------	------	------	------	15 75	----	31 50	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Ahead. O K. W. W. S. Chicago thro', 58c. per 100.

THE COMMERCIAL NATIONAL BANK OF CHICAGO.

140 Form 24—L. 514. *Jas. H. Stevenson. No.* 109. *Joint Way-Bill.* 679.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30463	Paris Myerick. Ac. J. & W. Blaker.	16 cattle, M. or L. ...	20,000	.....	.....	.....	.....	15 75	....	31 50	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Ahead. O K. W. W. S. Chicago thro', 58c. per 100.

141 Form 24—L. 514. *Jas. H. Stevenson. No.* 110. *Joint Way-Bill.* 680.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30478	Paris Myerick, Philad'a. Ac. J. &. W. Blaker.	15 cattle	20,000	.....	.....	.....	.....	15 75	....	31 50	21 86	Buf'o.

Erie, 10.93; L. V. & N. P., 15.75. Copy. Ahead. O K. W. W. S. Chicago thro', 58c. per 100. Via M. C., G. W., L. V. & N. P. roads.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Nov. 17th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30480 -----	Paris Myerick. Ac. J. & W. Blaker.	15 cattle----------	20,000	-----	------	-----	------	15 75	----	31 50	388 81	Bufo.

G. W. ---------- $366 95
21 86

Erie---------- 10 93
L. V. & N. P.----- 15 75

Copy. Ahead. O K. W. W. S. Chicago thro,' 58c. per 100. Via M C., G. W., Erie, L. V. & N. P. roads.

THE COMMERCIAL NATIONAL BANK OF CHICAGO.

143 PHILADELPHIA, *November* 11*th*, 1877.

Received from the North Pennsylvania Railroad Company the following packages in good order and condition.

Marks:

J. & W. Blaker, 202 cattle.

Erie 30483 × 30486 × 30484.
Erie 30493 × 30485 × 30498.
" 30463 × 30477 × 30480.
Erie 30465 × 30489 × 30496.

WM. HARRIS, JR., *Sup't.*

* * * * * * *

PHILADELPHIA, *November* 18*th*, 1877.

Received from the North Pennsylvania Railroad Co. the following packages in good order and condition.

Marks:

J. & W. Blaker, 201 cattle.

Erie 30483 × 30493 × 30485 × 30498.
" 30484 — 30477 — 30486 — 30463.
" 30478 — 30482 — 30480 — 30476.
" 30492.

WM. HARRIS, JR., *Sup't.*
Per H.

144 Form 24—L. 351–4. *Jas. H. Stevenson. No.* 1. *Joint Way-Bill.* 258.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Aug. 18th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30486	J. W. Blaker, Philad'a, Penna.	Car cattle, 18, M. or L.	20,000	------	------	------	------	15 48	----	30 96	21 04	Buffalo.

Erie 10 02 20 04
Tan bark 1
L. V. & N. P. .. 15 48

Copy. O K. W. W. S. Through, 25½ per 100.

145 Form 24—L. 560–18. *Jas. H. Stevenson. No.* 10. *Joint Way-Bill.* 420.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Aug. 18th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
P, 2524	Order Paris Myerick. Notify G. W. Blakey.	Car cattle	20,000	------	------	------	------	14 39	---	28 78	19 98	Buffalo.

Erie, 9.99; L. V. & N. P., 14.39. Copy. North Philad'a D. yards, from 12112. O K. W. W. S. Chicago through, 53c. per 100.

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THE COMMERCIAL NATIONAL BANK OF CHICAGO.

146 Form 24—L. 507. *Jas. H. Stevenson. No. 49.* *Joint Way-Bill.* 476.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Oct. 13, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
2538	Order H. Myerick. Notify J. W. Blakey, Philad'a.	Car cattle, 16, M. or L.	20,000	------	------	------	------	14 39	----	28 78	400 14	Buffalo.

M. C. R. R. ------ ------ 380 16
Erie ---------- 9 99
L. V. & N. P. ---- 4 39 19 98

Copy. From 12148. O K. W. W. S. Chic. through, 53c. per 100.

147 Form 24—L. *Jas. H. Stevenson. No. 54.* *Joint Way-Bill.* 781.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Oct'r 20, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight. 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
Erie, 30498	Order Parish & Myrick. Notify J. W. Blaker, Philad'a, Pa.	Car cattle	20,000	------	------	------	------	14 39	----	28 78	19 98	Buffalo.

Erie, 9.99; L. V. & N. P. Copy. From —. Ahead. O K. W. W. S. Through, 53c. per 100. N. Sat. W.

148 Form 24—L. 1204–27. *Jas. H. Stevenson No. 67.* *Joint Way-Bill.* 1085.

Way-bill of merchandise transported by L. V. R. R. and N. P. R. R., from Waverly to Philad'a, Oct'r 27th, 1877.

Kind and number of car.	Consignee or owner's name.	Description of articles.	Weight. 1st class.	Weight, 2d class.	Weight. 3d class.	Weight. 4th class.	Weight. Class A.	Rate.	Prepaid.	Freight.	Expenses.	Consignor.
P. & W. J., 2573.	Order Paris Myrick. Notify J. W. Blaker, Philad'a.	16 cattle, M. or L.	20,000	-----	------	------	------	15 75	----	31 50	21 86	Buffalo.

Erie. From 12612.

THE COMMERCIAL NATIONAL BANK OF CHICAGO.

149 The counsel for the plaintiff then read the deposition of Wm. Harris, Jr., as follows:

I live [at] No. 1732 Franklin street, in the city of Philadelphia. In 1877 I was superintendent of North Philadelphia stock-yard, and was so from October 16th, 1876, till April 1st, 1878. The stock-yard opened for business October 16th, 1876. It is on the North Pennsylvania railroad, in the northern part of the city of Philadelphia. I know Wade and Julian Blaker, lately trading as J. & W. Blaker, in the cattle business. They dealt at our yard from the second week after we opened until November 19th, 1877.

Question. To whom were the cattle way-billed or consigned from the commencement of their business?

NOTE.—Mr. Bispham objected to the question, as the general course of dealing of the Blakers with the stock-yard is not evidence in this case.

Answer. I recollect, I think, on one or two occasions of cattle being billed to Julian Blaker alone. I think that was for one or
150–1 two weeks, and the last week they dealt there the cattle were billed, I think, to Paris Myrick on ac. of J. & W. Blaker. All the balance of the time I have no recollection of their being billed otherwise than to J. & W. Blaker. We received at the cattle yard either the Saturday or Sunday previous to the 12th or 19th of November, 1877, the two last lots of cattle; the 12th of November was a Monday; the shipment of the 12th of November was twelve car-loads, somewhere about two hundred head of cattle.

Question. By whom was the cattle billed to you?

Answer. By Mr. Sell, the agent of the North Pennsylvania railroad at the drove-yard station. The lot received on the 19th of November was billed to us by Mr. Sell. There were thirteen car-loads and about two hundred cattle. I have both of the original way-bills, and will produce them hereafter. J. & W. Blaker received both these lots of cattle from the stock-yard and sold them or had them sold at the yard by commission men. I know Paris
152 Myrick, the plaintiff in this suit, when I see him.

Question. Did he ever exercise any ownership or control over these cattle so far as you know?

Mr. Bispham objects to the above question, because the witness is asked by the question to state an inference and not facts.

Answer. No, sir; I now refer to the two lots of cattle I have spoken of.

Question. Did he ever exercise any ownership or control over any of the previous shipments which you have before spoken of which were delivered to J. & W. Blaker between October 16, 1876, and November 12th, 1877?

Mr. Bispham objects to this question for the same reason as in last question, and also because it is irrelevant.

Answer. Not to my knowledge; he never appeared at the yard to

direct sales or to control the management of the cattle in any way. He was at the yard once for a week or more with a lot of horses for sale, but I don't think he gave any directions as to cattle in
153 any way that I know of. I was there pretty nearly all the time. Sometimes I would miss a day in a month and sometimes part of a day, but I never missed a market day. The principal market day is Monday; we had also markets Thursdays, Fridays, and Saturdays a good portion of the time. When I was away Mr. Harvey was there up to Dec., 1877. I was there all the time when anything required attention.

Question. Have you had any conversation with Mr. Myrick about these two lots of cattle, or about any other cattle, shipped to the Blakers?

Answer. Nothing particular about the purchase of cattle, but we talked about the failure of the Blakers after the 19th of November, 1877. About ten days after that time he came to the yard to see me, either at the yard or at my store, but I am pretty certain it was at the yard.

Objected to by Mr. Bispham.

He said he had received the drawbacks up to the time that the railroad company stopped paying them, some time in October, 1877. Since then he supposed the Blakers were making money,
154 and he expected there would be about six hundred dollars coming to him as his share of the profits or as commission, but since they had failed he did not expect to get anything. I mean by drawback an abatement allowed by the railroad company to the shippers on their rates of freight. Myrick did not state the amount of drawback to my knowledge, nor did he say how long he had been buying cattle for the Blakers; the cattle that arrived on the Saturday or Sunday previous to the 12th of November, 1877, were all sold on the 12th, and I don't think there was a bullock of theirs left in the yard at sundown; the cattle that arrived on the Saturday or Sunday previous to the 19th of November, 1877, were all sold on that day and taken away from the yard.

I wish to say that at the conversation I had with Mr. Myrick, about ten days after the 19th of November, 1877—the same interview I have referred to—I asked him how he raised the money for these cattle, and he stated that a bank in Chicago had
155 discounted his draft and taken the bills of lading as security, and he had nothing more to do with it.

(Sig.) WM. HARRIS, JR.

By agreement of counsel the taking of depositions herein is adjourned until Wednesday, the 12th day of June, A. D. 1878, at 12 o'clock m.

(Sig.) JAS. H. STEVENSON,
Commissioner.

OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
WEDNESDAY, *June 12th*, 1878.

WILLIAM HARRIS, Jr., being again produced for defendant, deposeth as follows:

I was examined in this matter on the 11th day of June, 1878, instant, and stated that I had way-bills for the lots of cattle delivered to J. & W. Blaker. I have those two way-bills in my hand now, and also copies of them (the copies are marked "Jas. H. Stevenson," Nos. 144 and 145, respectively, and are hereto attached, and it is agreed by counsel that they shall be received with the same effect as if they were the originals).

One is dated Nov. 11, 1877, and the other Nov. 13, 1877.
156 They are for the cattle that were sold at the North Philadelphia stock-yard by J. & W. Blaker on the 12th and 19th days of November, 1877.

Cross-examined by counsel for plaintiff:

I suppose the bills are in the handwriting of Mr. Sells. They were handed to me by him. He does his own writing. He has a boy in his office, but these bills are not in his hand. The meaning of the "corrected" on the way-bill of Nov. 11, 1877, I do not know, but I think I can partially explain it. Sometimes mistakes are made and when a new copy is made out it is marked "corrected." The freight called for in those bills has been paid by me. The Friday following each market day—I usually paid on those days. Each of the freight bills was paid by me within a week of its date, to a certainty. I obtained receipts for these payments of freight, and the book containing the receipts was produced at a previous meeting. (Mr. Bispham call for those receipts.) These
157 way-bills were handed to me or left with Mr. Harvey at my office at the drove-yard by Mr. Sell. I was at the drove-yard on Nov. 11 and 18, 1877. I gave receipts, or Mr. Harvey did in my name, for the cattle called for in those way-bills. I received the cattle called for in those receipts for the parties named in the way-bills. We delivered the cattle to the parties named in the receipts. We delivered the cattle called for in the receipt of Nov. 11, 1877, to J. & W. Blaker, and those in the other receipt to the same parties. We deliver the cattle to whomsoever the railroad company directs, and take care of any charges the railroad company specifies, and that we did in these two instances after we received these cattle from the railroad company for J. & W. Blaker alone. The cost of feeding the cattle was charged to J. & W. Blaker, and upon paying these charges they had a right to take the cattle away for disposal. Whether the receipts were signed the same day that the way-bills were handed to me, I can't say positively. If we got the
158 cattle called for in the way-bill we were not so particular, and several receipts might be signed together; if the receipts bear date the same day as the way-bills, I think they must have been signed at the same time; at the time I gave the receipts for the cat-

tle I had no way-bills or vouchers of any kind relating to these cattle in my possession; neither Mr. Sell nor any one else on behalf of the railroad company asked for the production of such documents at that time, nor did they make any inquiries of me or of any one else in my presence in relation to the bills of lading.

Question. Did Mr. Sell or any one else on behalf of the railroad company direct you to require that bills of lading should be produced and surrendered for the cattle called for in the way-bills before delivery of the cattle to the Blakers, or did they give you any instructions of any kind whatever on the subject?

Answer. No, sir.

Question. Did Mr. Sell or any one else on behalf of the
159 railroad company instruct you to communicate with any one except the Blakers in reference to these cattle, or did they give you any instructions to communicate with anybody at all on the subject.

Answer. No, sir.

Question. Did you see either of the Blakers at the drove-yard on those two Sundays?

—. I don't distinctly recollect as to Sundays, but I think Julien was there when the cattle were delivered on the two last Sundays; but I am not positive about that. The cattle were turned into the yard which they usually had, and were taken care of by their men. They had a particular yard for their cattle, and these two lots of cattle were turned into their yards as far as they would hold them. Our yards are all numbered, they had Nos. 2 and 3; these yards are closed by gates with locks on. The keys are kept by the superintendent and the feeding men. These men are employed by the company. We don't let other people have keys unless we have confidence in them sometimes a drover has a key; I don't think
160 the Blakers ever had keys. We hold the cattle subject to the orders of the parties for whom we have received them. If there is any doubt about the parties we hold on until we get our money. If not, we let them go in on Monday morning, and take them out and sell them.

The Blakers went in on those two Monday mornings with our permission, and took the cattle and sold them. I mean by "parties in whom we had confidence" the parties upon whom we could rely for paying our charges for freight and feeding the cattle. The Blakers have never reimbursed me for the charges on those cattle. I prosecuted them and made a settlement, but did not get all my money. I do not know what became of the cattle after they left the yard, but could ascertain the parties to whom they were sold by the Blakers. A good part of them were sold by commission men—Mr. Clemton sold part of them, Mr. Levi a part, and Mr. Chandler a part—and the books of the company will show to whom the purchasers sold them—I mean the weight-book of the drove-yard company.

My recollection is that not a bullock was left in the yard on
161 either day; certainly none of them were left as owned by the Blakers. It is possible that some of them might have been left,

over-night by the purchasers for the drivers to take them away next day, but am not positive of that. My impression is that no cattle were left in the yard on either of those days. I don't know what became of them after they left the yard; they were sold to the butchers, I presume, to be slaughtered. I think I saw the way-bills that accompanied these cattle; I meant the original bills from which these are copied; I mean the way-bills that accompany the cattle. Those are entered in a book. I mean by these way-bills that accompany the cattle bills such as are marked "Jas. H. Stevenson," Nos. 87 to 111, both inclusive, which are hereto attached.

Question. Do you think you saw those way-bills?

Answer. I saw way-bills, but can't say that these are the bills I saw. They were such as these. I can't identify these particular bills, but I know that the way-bills that accompanied those cattle were similar to these. The freight bills which were delivered
162 to me are copies of the way-bills which accompany the cattle; they are condensed. I refer to freight bills Nos. 144 and 145 hereto attached. I knew Paris Myrick. I think he was not at the drove-yard on either of the Sundays of Nov. 11th or 18th, 1877.

Question. Did you send any notice to or have any communication with Paris Myrick upon the subject of these cattle upon these two occasions?

Answer. I sent him notice and had no communication with him at that time.

Question. Did Mr. Sell or any one else connected with the North Pennsylvania Railroad Co. direct or request you or any one connected with the North Philadelphia drove-yard to communicate with Paris Myrick on either of these occasions in reference to these two lots of cattle?

Answer. No; not to me, nor to any one else, to my knowledge.

Question. Did Mr. Sell call your attention to the fact that the name of P. Myrick appeared on some of the way-bills marked from 87 to 111, inclusive, and that the name of Paris Myrick also appeared on the freight bill marked No. 144 at that time?

Answer. No, sir.

Question. Do you know what a bill of lading is?

163 Answer. Yes, sir; I think I do. I have seen a good many of them. It is a receipt for stock or other goods or merchandise shipped. It is the title to the goods, &c. I think I have seen bills of lading of the Michigan Central railroad. I saw those two here. I have seen plenty of other bills of lading. The two bills of lading of which I spoke I saw at Mr. Wister's office. I think, upon reflection, I saw copies of them only.

Question. After Nov. 26th, 1877, the North Pennsylvania Railroad Co. required bills of lading to be surrendered, did they not, when stock was delivered?

Answer. I so understood from Mr. Sell. I never attended to that. Mr. Sell would notify me to hold the stock till bills of lading were delivered up. As a general thing I sent the parties with the bill of lading to Mr. Sell, and if he was satisfied I would deliver the stock.

This was not done in the shipment of Nov. 11 and 18, as that was before the arrangement was made.

Question. You stated in your examination-in-chief that, as far as your knowledge went, Paris Myrick never exercised any owner-
164 ship or control over any of the shipments previous to that of Nov. 11, 1877. You don't mean to say that he might not have given directions by letter or otherwise in reference to the cattle without your knowing it?

Answer. No, sir. He might have given directions of which I knew nothing. He might have had an interest in these two last lots of cattle, so far as I know. I did not know of my own knowledge who owned them or who was interested in them.

Re-examined by Mr. WISTER:

Question. You said in your cross-examination that you received no instructions from Mr. Sell or any one else with reference to the two last lots of cattle, requiring bills of lading to be produced for the same?

Answer. Yes, sir.

Question. Did you receive any instructions about bills of lading for any of J. & W. Blaker's cattle received before that time?

Objected to by Mr. Bispham.

Answer. No. I never received any instructions from anybody about the Blakers' cattle or bills of lading for them previous to Nov. 26, 1877.

Question. In your conversation with Mr. Myrick, since the
165 failure of the Blakers, did he state to you that he had no interest in these cattle?

Objected to by Mr. Bispham.

Answer. No; he did not state that he had no interest in them.

Question. What did he state?

Objected to by Mr. Bispham.

Answer. He stated, with reference to these two lots of cattle specially, that he was under no obligation for payment for them, and that he was rid of that, and, in relation to the business altogether, that previous to the 13th of October, 1877, he had received a drawback, which I understood him to say was a satisfactory consideration for purchasing their cattle; that since that time, from the information received of the business from the Blakers, he had calculated there was about six hundred dollars due him, and he reckoned now he wouldn't get anything.

166 Counsel for the plaintiff then offered in evidence and read to the jury the deposition of Julian Blaker as follows:

Julian Blaker, of the city of Philadelphia, aged about twenty-four years, being produced, sworn, and examined on behalf of the plaintiff, deposes as follows:

I reside at 425 North 3rd street, in Philadelphia, and work for

Paris Myrick. I was a drover of cattle in November, 1877. I was in that business from 1874. In 1877 I did business at the North Philadelphia drove-yard in the city of Philadelphia. I did business there from the time the yard opened, in October 16th, 1876. I am not positive to the exact day. My brother Wade was in business with me; the firm name was J. & W. Blaker. I attended to the selling and buying cattle most of the time and to collecting. My brother attended to all, or most all, of the banking business. I was living in Philadelphia in 1877; boarding at the drove-yard.

My brother Wade was living at home at that time, at Newtown, Bucks Co., Penna. I wasn't boarding in Philadelphia regu-
167 larly. I considered Newtown my home. When not at home or boarding in Philadelphia I was travelling to Buffalo, Chicago, &c. I have known Paris Myrick between two and three years.

In November, 1877, Paris Myrick was farming and buying cattle for us. He bought cattle at the Union stock-yards, Chicago. I know it as the Union stock-yards. I remember the two last shipments of cattle made by Myrick from Chicago to Philadelphia in November, 1877; they reached Philadelphia on Nov'r 11 and 18th, 1877; these days were Sundays; the cattle were delivered at the North Philadelphia drove-yard by the North Pennsylvania Railroad Co. to the stock-yard. I was at the stock-yard Sunday Nov. 11, 1877. I think I was there when the cattle arrived and were delivered. I don't remember the time of day, but they generally got in about 9 o'clock a. m. The cattle were put in our yards. We had our yards to sell cattle in. By our yards I mean J. & W. Blaker's; they had our names on; the yards were assigned to us by the
168 stock-yard company; the superintendent of the drove-yard put the cattle in our yards; it was his duty to do so; there was no bill of lading for that lot of cattle; we never gave up any bill of lading for that lot of cattle then or subsequently; neither the superintendent nor any other person connected with the stock-yard asked me for any bill of lading.

I know Mr. Sell, the agent of the North Penna. R. R. Co. at the drove-yard station; neither he nor any one else on behalf of the North Penna. R. R. Co. asked me for any bill of lading for this lot of cattle. I never had a bill of lading for this lot of cattle in my possession. My brother was not at the yard when this lot of cattle arrived. He was at home in Newtown. I don't remember how many head of cattle were in this lot of cattle, and have nothing to refresh my memory; there were twelve car-loads. I find this by reference to a memorandum in my pocket-book. I have a book in which I put down the sales; that will show the number of cattle; this book is not here, but can be produced.

(Joint way-bills marked Jas. H. Stevenson, Nos. 87 to 98,
169 both inclusive, shown witness.)

Question. Did you ever see those way-bills?

Answer. I never saw those bills. I have seen similar bills. I never saw the way-bills that accompanied this lot of cattle. This

lot of cattle were disposed of to the butchers by me and my brother. My brother was present at the yard on Monday when the cattle were sold; the cattle were all sold by 1 o'clock p. m. on Monday, and were taken from the yard that day. My brother paid the freight on this lot of cattle. I was present at the payment. The freight was paid on Monday, between one and two o'clock p. m. We got a receipt for the payment. I have not the receipt with me, but will look for it when I go home, and, if found, will produce it at next meeting. The freight was paid by J. &. W. Blaker's check. The check I have not with me, but will look it up, and, if found, will produce it at the next meeting. We paid for holding the check.

We paid something to Huggard (secretary or treasurer of the
170 drove-yard) or to Harris, the superintendent of the drove-yard, for holding the check, which was dated a week ahead; it was five dollars; they charged us for holding the check. We got no receipt for this five dollars which was paid in cash.

This was not included in the freight charges; it was entirely outside of that. I was not at the stock-yard Nov. 18, 1877, when the last lot of cattle arrived; neither was my brother Wade; he was on the road from Chicago to Philadelphia and I was at home at Newtown. I was at the yard in the afternoon of Sunday, the 18th of November, but not at the time the cattle came in. I saw this lot of cattle that afternoon; they were in our pens and of other people's pens who sold for us. The butchers got those cattle. We sold part of them and the commission men sold part of them. I got the money for them, and also for the other lot. The sales by the commission men were for our account. I don't remember how many head of cattle were in this lot; there were thirteen car-loads. I did not pro-
171 duce or have with me any bills of lading for this lot of cattle, and none were asked for by either the stock-yard company or the railroad company. On that Sunday I found that lot of cattle in our pens and in the pens of parties who sold for us without having produced any bill of lading or any voucher whatever, or without any being asked for by any one, so far as I know.

We dealt pretty heavily in cattle, but more heavily in the past year. The whole of last year we dealt pretty heavily. I am familiar with the value of cattle. These two lots of cattle were worth from four and a half to six cents a pound. We sold those two lots of cattle for between $25,000 to $26,000 *dollars*. These sales were at the rate of from four and a half to six cents per pound. My brother paid the freight on the last lot of cattle; I was present in the room at the time; it was paid by our check, and we got a receipt. I will try to bring this check and receipt to the next meeting. We also made the extra payment of five dollars to Mr. Huggard in cash for holding our check, which was dated a week ahead. We got no receipt
172 for the five dollars extra paid to Huggard. This was the last lot of cattle shipped to us by Paris Myrick.

Both of these lots of cattle were delivered by the North Penna. R. R. Co. to the north Philadelphia drove yard, and we got them. My brother Wade is in Minnesota. He left Philadelphia last Monday week. He will be back in three or four weeks from now.

(Sig.) JULIAN BLAKER.

The cross-examination of this witness was postponed till he should have the checks and receipts spoken of present, and no other witnesses being produced the taking of depositions herein is adjourned until Tuesday, July 16, 1878, at one o'clock p. m.

(Sig.) JAS. H. STEVENSON, *Com'r.*

OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
TUESDAY, *July* 16, 1878.

Met at 1 o'clock p. m. pursuant to adjournment, but no witnesses being produced the taking of depositions herein is adjourned until Wednesday, July 17th, 1878, at 1 o'clock p. m.

(Sig.) JAS. H. STEVENSON, *Com'r.*

173 OFFICE OF JAS. H. STEVENSON,
No. 13, So. 5TH ST., PHILADELPHIA,
WEDNESDAY, *July* 17, 1878.

Met at 1 o'clock p. m. pursuant to adjournment; both counsel present.

JULIAN BLAKER, being recalled, deposeth as follows:

I looked for my book in which I entered sales of cattle and found it. I find it contains only sales of cattle which we sold ourselves and not those sold by commission men. I found the checks given for the freight. These are the ones. (Checks produced, one dated Nov. 12, 1877, and is for $1,592.42, and the other is dated Nov. 19, 1877, and is for $1,702.82.) They are both on the First National Bank of Newtown. These checks were both protested, but subsequently paid.

(Mr. Bispham now offers those checks in evidence, copies of which are hereto annexed, marked "Jas. H. Stevenson" A. & B., which is is agreed are to be received in evidence with the same effect as the originals.)

I found one of the receipts given to us for the freight, but not the other. The one which I found is dated Nov. 19, 1877, and is
174 for $1,702.82; it is in Mr. Thos. L. Huggard's handwriting.

(Mr. Bispham now offers this receipt in evidence, a copy of which is hereto annexed, marked "Jas. H. Stevenson, C," which it is agreed shall be received in evidence with the same effect as the originals.)

Cross-examined by counsel for defendant:

Myself and my brother Wade formed the firm of J. & W. Blaker. We were cattle drovers and dealers and dealt at the North Philadelphia stock-yard from the opening thereof, in Oct., 1876, till Nov. 19, 1877, when the last lot of our cattle were sold; during that time we received consignments of cattle weekly, or almost weekly, from the West. I can't tell exactly when we began to buy cattle at Chicago; we began about May, 1876. Paris Myrick was our Chicago

buyer. I had know- him about two years previous to that time; his duty was to buy cattle for us when we ordered them and ship them to us at Philadelphia. Paris Myrick has been in Philadelphia from time to time. I don't think I ever introduced
175 him to any one at the drove-yard as our buyer. I may have introduced him to people, but not as our buyer. He only bought for us occasionally; he had no control over our business in the sales of cattle, nor had he any interest in our business whatever. He did not direct us when to buy or when to sell, nor for what prices. He had no interest whatever in our profits or losses, and we had no account to render to him of our transactions in any way. I recollect when he came to [the] Philadelphia drove-yard with a lot of horses for sale; it was in the spring of 1877—in March or April—or may be a little later on. We had nothing to do with that transaction whatever. Mr. Myrick was to have the drawbacks, which he got from the railroads of the West, for his pay. I mean the railroads coming out of Chicago, where he bought; drawbacks are a rebate received from the railroads companies by the shippers on freight paid—that is to say, when the cattle that Mr. Myrick shipped arrived in Philadelphia, and the freight was paid on them according to the freight bill, Mr. Myrick was then entitled to receive money from the rail-
176 road company over which he shipped the cattle from Chicago according to our contract. He got all the way from eight to fifteen dollars or perhaps twenty dollars a car, according as he could arrange it. When he first commenced he got eight, but toward the last he got twenty dollars a car. There are several lines running out to Chicago, which gave him an opportunity of a choice. He did not always get a drawback; he got none for the last two or three weeks that we shipped, and when he first began he got none. We gave him then what we chose to give him, according to the business which we did; we had no regular contract about that. If we made money we were liberal with him, but if we did not we paid him nothing. We once gave him one hundred dollars when he hadn't been getting any drawbacks; that was when we first began the business and he had not yet got any drawbacks. We paid him money at other times. H used to send a man with the cattle to Pitts-
177 burgh or Buffalo, and we would meet him and send money back with this man. I don't remember how much we sent at a time, but hardly sent less than twenty or thirty dollars. I know Henry Bennett; he was in our employ in 1877; he began in the spring and kept on till we quit in November; he began in the spring or summer; he was employed to take charge of the cattle between Chicago and Philadelphia; he received the cattle from Mr. Myrick at Chicago, and traveled with them to Philadelphia and turned them over to the North Philadelphia drove-yard; he cared for them on the way. During the time he was working for us he brought us all the cattle which we received from Chicago. He generally left Philadelphia on Sunday night, and he would leave Chicago with the cattle on the following Wednesday, arriving in Philadelphia again on Sunday morning; he may have got in sometimes on Saturday. The cattle arriving on Sunday would be sold, some the same

178 day and the rest on Monday; they were usually all sold out on Monday; there may have been a few times when they were not all sold on Monday; once we shipped them on to New York and sold them there; they didn't bring the price we wanted here and we sent them to New York. As a general thing, we didn't get all cash for our sales. We trusted a good deal on book account to butchers, most of whom didn't pay for their cattle in cash. Most of the butchers bought on time—from one to four weeks' time. What we sold through commission men we got the cash for, but what we sold ourselves we booked.

When we were getting two hundred head of cattle a week we ourselves sold about sixty head, and the balance were sold by commission-men. If we had a shipment of three or four car-loads only we would sell them all ourselves. We received a lot of cattle, about two hundred head, on November 11, 1877, and they were sold on the 12th. I presume about one hundred and forty or fifty were sold by commission men; the rest we sold ourselves; these we sold were mostly sold to butchers; some may have been sold to com-
179 mission men; can't tell how much cash we got on that sale; I presume we got between five and eight thousand dollars in cash that day. I think we got several checks, some of which were protested. I went to the Second National Bank of Philadelphia, at Frankford, on the 16th of November, 1877. I was there one day, but won't be certain of the day. I was there the latter end of that week. It was either Thursday or Friday. I know Jno. D. Blaker was with me when I was there one day of that week. I may have been there both Thursday and Friday. I know I was there twice that week after Monday, for I deposited there the money I got on Monday. I don't remember the amount deposited by me. The last time I was there that week my brother, John D. Blaker, was with me. I inquired of the cashier of the bank whether a check of ours had been received from the Newtown bank, and was told it had, and that it had been protested. The check was for something in the neighborhood of $13,000, perhaps a little over that amount. The check had been deposited in the Newtown bank for
180 collection by John D. Blaker. I don't think I asked the cashier to pay that check; I asked him for a draft for the money we had in the bank; I did'nt ask him to pay the check, for we had'nt enough money in the bank to meet it. I asked him for this money to pay the draft that lay in the Newtown bank. That was the draft for the cattle that arrived on Nov. 11, 1877. I got a draft from James Anderson, cashier of the Second National Bank of Philadelphia, at Frankford, on a bank in Philadelphia for $11.623. I did'nt take the draft to Newtown, and did'nt go to Newtown that day; John D. Blaker took the draft to Newtown. I gave the draft to him, but I don't know of my own knowledge what he did with it. I gave it to him to pay the draft in the Newtown bank. The check we had given to Jno. D. Blaker for $13.000 and upwards was given to him to pay the draft for the cattle which arrived in Philadelphia on the 11th of November, 1877. John D. Blaker had given them the check, but the Newtown bank would not receive it as cash as

they had been doing. I mean the check for $13,000 and
181 upwards. John D. Blaker did not give the draft for $11,623 of Second National Bank of Philadelphia, at Frankford, upon a Philadelphia bank to the Newtown National Bank. I endorsed the draft to Jno. D. Blaker for our firm of J. & W. Blaker. He never returned that draft or the money for it. I know he kept it. He got it cashed and kept the money. I don't think I was in Newtown between the 12th and the 26th of November, 1877. Upon reflection I think I was there on Sunday, Nov. 18, 1877. I went on the train on Sunday, and returned same day, and I think that is the only time I was in Newton between the 12th and 26th of Nov., 1877. I may have gone there late Saturday night upon the above occasion and returned on Sunday. I had no notice whatever of the arrival at Newtown of the drafts for the two last lots of cattle. I don't think Wade was in Newtown between the 12th and the 26th of November, 1877; I don't think so because if he had been there he would have paid the draft instead of my brother John. He may have been there, I am not positive, I can say positively that my brother
182 Wade was not in Newtown between the 12th and 21st of November, 1877. He may have been there after that. When the cattle were bought and left Chicago, I always got a telegram from Mr. Myrick. I generally got it Wednesday night, but sometimes on Thursday. He wrote to tell me the cost of cattle and send the bill, but not always; sometimes this information came with Mr. Bennett. Letters mailed at Chicago on Wednesday I generally got on Friday. I don't know the course of mail between Chicago and Philadelphia. I can't say positively whether I got the letters on Friday or not. (Exhibits Nos. 116 & 117 with defendant's testimony shown to witness.) I can't say that I ever ordered that telegram of Mr. Sell's sent to Waverly; sometimes Mr. Sell sent them on his own hook; sometimes I or Mr. Harris would ask him to find out when the cattle would leave Waverly. (Exhibits Nos. 112 &
113 of defendant's testimony shown witness.) That's correct. I sent them telegrams. I can't remember the date. The cattle
183 I telegraphed for there arrived in Philadelphia on the 11th of November, 1877—that is, twelve car-loads came, and not fourteen, as telegraphed for. (Exhibits No. 114 of defendant's testimony shown witness.) I think I have seen a telegram like this. (Exhibit No. 115 of defendant's testimony shown witness.) I sent that telegram. The cattle here telegraphed for arrived in Philadelphia Nov. 18, 1877. I sent for twelve loads and Myrick sent thirteen loads. The telegrams were sent and received through Mr. Sell at the drove-yard station, North Pennsylvania railroad. My brother Wade usually took up the drafts from Chicago. I don't think I ever took up any of them. I may have taken up one or two.

Re-examined by Mr. BISPHAM:

The duties of Mr. Bennett were to feed and take care of the cattle on the road only; that is all I meant by saying he had charge of the cattle. I don't remember the date of the check for $13,000 and up-

wards on the Second National Bank of Philadelphia, at Frank-
184 ford; it was some time during the week beginning Monday, Nov. 12, 1877. I drew that check for the purpose of paying the draft at the Newtown bank. I knew there was a draft at the Newtown bank which had been given for the purchase-money of the lot of cattle which arrived Nov. 11, 1877. I knew the cattle were there; they had come, and knew the draft must have been sent, and it always had got there ahead of the cattle.

The cattle had always been paid for in that way. My brother generally attended to taking up those drafts, but he was away, and all I could do was to send a check to my brother John; when I made out the check I didn't have the full amount of money there. I had to collect the balance, and that was the reason why I didn't go up. I supposed also, for the same reasons as given above, that a draft was given for the last lot of cattle, viz., the lot that arrived here Sunday, Nov. 18th, 1877. Those drafts had for a long while come through the Newtown bank. My brother Wade at-
185 tended to all the banking business.

Recross-examined by Mr. WISTER:

For the last three or four months, and perhaps longer, we had been paying freight and charges on the cattle received by us in checks similar to those marked Exhibits A & B, payable ten days from date. Our firm failed on Monday, Nov. 19, 1877—that is, we knew it that day. We knew when our brother told us that the draft had not been paid for the cattle received Nov. 11, 1877, and sold Nov. 12, 1877, that we had failed or were bankrupt. He told us both together at the drove-yard Monday afternoon. He told us the draft was at Newtown, but that he hadn't paid it.

(Sig.) JULIAN BLAKER.

(Sig.) JAS. H. STEVENSON, *Com'r.*

186 "A."

EXHIBIT "A."

No. —.

Nov. 12TH, 1877.

First Nat. Bank, Newton, Pa., pay to Wm. Harris, Jr., sup., Nov. 20, one thousand five hundred ninety-two $\frac{42}{100}$ dollars, $1,592.42.

[Stamp, 2 cents.]

J. & W. BLAKER.

Endorsed: Wm. Harris, Jr., sup't.

For collection for the Girard National Bank, of Philadelphia.

W. L. SCHAFFER, *Cashier.*

Endorsement erased.

Protested twentieth day of Nov., 1877, by John M. Stapler, notary public. "No funds."

"B."

EXHIBIT "B."

No. —.

PHILADELPHIA, *Nov.* 19, 1877.

First Nat. Bank, Newton, Pa., pay to Wm. Harris, Jr., sup't, Nov. 27, or order, seventeen hundred two $\frac{82}{100}$ dollars, $1,702.82.

J. & W. BLAKER.

Endorsed: Wm. Harris, Jr., sup't.

187 Pay to S. C. Case, Esq., cashier, or order, for collection, Shackamaxon Bank, Philadelphia.

T. L. HUGGARD, *Cashier.*

Endorsement erased.

Protested twenty-seventh day of November, 1877, by John M. Stapler, notary public. "No funds."

188 The counsel for the plaintiff then recalled the former witness, George L. Otis, who testified as follows:

Mr. MACVEAGH:

Q. Please state whether or not in your previous dealings you had always affixed the draft to the bill of lading?

A. Always—in every case.

Q. Had you any knowledge or reason to suspect that the cattle were ever delivered without the draft?

A. No, sir.

Judge BUTLER:

Q. Well, the bill of lading was to be presented and received before the receipt of the cattle?

A. Yes, sir.

Cross-examined by Mr. GOWEN:

Q. You remember the letter that you referred to this morning in which you wrote to Mr. Case, the cashier of the Newton bank, asking an explanation of the delay in the return of the drafts?

189 (See letter, page 9, *supra.*)

A. Yes, sir.

Q. What was your impression with regard to this?

A. I supposed these cattle were en route somewhere.

Q. Can you explain why Mr. Case wrote to you inquiring whether you had collateral security for these bills of lading?

(Objected to as a question of law and withdrawn.)

The counsel for the defendant then offered in evidence and read to the jury the depositions following:

Deposition of Samuel C. Case Produced.

190 I am the cashier of the First National Bank of Newtown, Bucks Co., Penna., and have been ever since April, 1874. I know Julian and Wade Blaker. I know that they traded under the firm name of J. & W. Blaker. I knew the firm in business as far back as the early part of 1877. They were dealers in cattle, as far as we understood it. They were drovers. They carried on business at Newtown township—about three or four miles from Newtown. I have no personal knowledge of their business anywhere. I understood they received cattle at the North Philadelphia drove-yard. I have no personal knowledge of that. I have heard the Blakers say that they were receiving cattle at Philadelphia, or dealing in cattle there at the new drove-yard, which I have since learned was on the North Pennsylvania railroad. I do not know this Paris Myrick personally. I have been introduced to him, but I have no particular knowledge of him. I was introduced to him by Wade Blaker about two or three weeks ago at the railroad depot at Newtown. Blaker said: "This is Mr. Myrick, with whom we have have been dealing, and he wishes to see you."

191 Question. Did he or did he not state that he was their Chicago buyer?

Answer. He did not, or anything to that effect. I had had Myrick pointed out to me when passing the bank with the Blakers.

Question. Was he pointed out to you at that time as J. & W. Blaker's Chicago buyer?

Answer. No, sir.

Question. What was stated?

Objected to by Mr. Bispham because what some third person said can't be evidence.

Answer. Some person said to me: "That is Mr. Myrick from Chicago with Mr. Blaker." I think he was with Wade Blaker; don't know positively.

Question. Had Paris Myrick transacted business with your bank?

Answer. I call it the bank's transaction. I'll state what it was. He drew drafts on J. & W. Blaker through the Commercial National Bank of Chicago, which were sent to us by that bank for collection; this had been carried on about two months, as near as I can remember, and ended by the protesting of the two drafts drawn Nov. 7th and Nov. 14th, 1877; these drafts were for something over

192 twelve thousand dollars each. In the period named we had six or eight drafts, about one a week; there may have been one or two weeks missed when they began to draw large drafts. I am now referring to the time in which they were drawing large drafts in the period of two months before spoken of. In the months of September, October, and November, 1877, the large transactions were carried on. I think there were other drafts for smaller sums drawn before September by Paris Myrick upon J. & W. Blaker sent to us by the Commercial National Bank of Chicago. I think some were sent by another Chicago bank, drawn in the same way. Most of the

drafts *and* bills of lading attached—that is, the large drafts; I don't know that all the small ones had. These drafts were paid by Wade Blaker on account of the firm of J. & W. Blaker. The drafts were all on J. & W. Blaker; I mean all were paid except the two protested ones of which I have before spoken.

Question. On receipt of these drafts with bills of lading attached did you notify the North Pennsylvania Railroad Co. or the North Philadelphia Stock-Yard Co. that you had such drafts and bills of lading?

193 Objected to by Mr. Bispham.

Answer. No, sir; I believe that the bills of lading were in all cases endorsed by Paris Myrick.

Question. In what length of time after the drawing of these drafts were they usually paid?

Answer. From five to seven days. They were direct drafts, no sight or time mentioned, and payable at once without grace, if acceptable to them; I mean acceptable to J. & W. Blaker. The drafts were presented to J. & W. Blaker, who examined them, and if correct paid them. None of them were found incorrect, to my knowledge. I am not referring to the last two drafts, which were protested.

Question. When the drafts reached your bank when and how did you notify J. & W. Blaker?

Answer. By sending a notice to them by some one. I can't say that the notices always stated the amounts. I usually sent them word that there was a draft on them at the bank, and they generally came over, if at home. We have no bank runner. We sent word generally by some of the family that happened to be in town. One of the brothers was generally in town every day. I mean, not J. & W.

194 Blaker, but a brother of theirs. They have two brothers residing near them. Very often Wade Blaker would be in town and we would notify him. He was usually in town on Monday evenings or upon Tuesday of each week. We usually sent notice in an hour or two after the receipt of the drafts; I mean we usually sent word in a few hours—sometimes in one or two hours. The notice was always sent the same day, to the best of my recollection.

The drafts were usually paid in a short time after notice; I can't tell the exact time—sometimes the same day and sometimes the next day, when the notice had been sent out in the evening.

Question. Then, I understand you to say that all the drafts drawn by Paris Myrick upon J. & W. Blaker previous to the 7th of Nov., 1877, were paid by J. & W. Blaker the day you received them or the next day?

Answer. Yes, sir. There may have been an instance when they were in the city and could not get back, and the drafts would not be paid till the next day—that is, till Tuesday evening. The bank has received money from J. &. W. Blaker, on some occasions, as late

195 as six or seven o'clock p. m., when they have made deposits and accepted drafts. J. & W. Blaker kept an account in our bank. I can't tell when their account was opened, but I

think it was some time in 1876, and down to the protesting of these drafts it was an active account, and I think they have a little balance there now. The letters covering these drafts reached us from Chicago in five to seven days after their date. I do not remember that I ever had any request sent to me not to protest any drafts on J. & W. Blaker; I am still referring to drafts prior to that of Nov. 7th, 1877.

Letters came to our bank direct from Chicago. We remitted, according to instructions, to a bank in New York to the credit of our Chicago correspondent. All I know about the course of mail from Newtown to Chicago is that Mr. Otis in a letter informed me *by letter* that it took five or six days.

Question. Do you know how long it was before the Commercial Bank of Chicago knew of the payment of a draft on the Blakers from the time the money was paid?

Answer. I think, on an average, it was thirteen or fourteen days—I can't speak positively; we had no way which we could tell. I have a letter here from the cashier of the Chicago bank that may tell something about it.

196 (Letter produced and examined.)

This letter says: "He notices that two drafts of Oct. 25 Nov. 1, 1877, were out eighteen or fifteen days, respectively." This letter bears date Nov. 16, 1877; it is from G. L. Otis, cashier, to me, cashier. I replied to that letter on Dec. 8, 1877. The letter of Nov. 21, 1877, was intended as a reply, but it did not answer Mr. Otis' question explicitly. I therefore wrote again on the 8th of December.

Copy of letter of Nov. 16, 1877, from Otis to Case, is hereto attached, marked Jas. H. Stevenson, No. 120, which it is agreed by counsel may be accepted as the original letter.

The copy of reply to above, dated Dec. 8, 1877, Case to Otis, is hereto attached, marked Jas. H. Stevenson, No. 121, and by agreement of counsel it is to be accepted as the orignal letter.

Witness resumes: To the best of my recollection, we received the draft of Nov. 7, 1877, on Monday, Nov. 19, 1877, as near as I can get at it. I have a copy of the letter which enclosed this draft.

Letter produced bearing date Nov. 7, 1877.

There is nothing upon the letter to show when it was received. I did not notify the Chicago bank upon receipt of this letter, except
197 by a telegram on Wednesday morning following its receipt; in the meantime I had received another draft, dated Nov. 14th, 1877, for collection. I received those two drafts within forty-eight hours of each other, as near as I can recollect. I have no envelopes belonging to them with me, but may have at home; if so, I will send them to the commissioner.

Letter dated Nov. 14, 1877, produced, from G. L. Otis, cashier, to the First National Bank, Newtown. This letter contained the draft

of Paris Myrick on J. &. W. Blaker, of Nov. 14, 1877, for $12,448.12. This letter contains: "Deliver b. l. only when draft is paid." This was the usual instructions, but was not in the letter of Nov. 7, 1877.

(Copy of telegrams produced, fourteen in number.) These comprise the original telegrams received by me and those I sent concerning the two last drafts; one of these telegrams is to the North Pennsylvania Railroad Company and another to Mr. Huggard, cashier of the Shackamaxon Bank; the rest are either my telegrams to Mr. Otis or his to me.

(Copies of the telegrams hereto attached and marked "Jas. H. Stevenson," Nos. 122 to 135, inclusive, counsel agreeing that
198 the same shall be considered as evidence with the same effect as if they were originals.)

Witness resumes: I wrote letters to Mr. Otis and received replies from him on the subject of these two drafts.

Copies of letters, Geo. L. Otis, cashier, to the First National Bank of Newtown, dated Nov. 7 and Nov. 14, 1877, and of letters, Geo. L. Otis, cashier to S. C. Case, cashier, dated Nov. 26th, Dec. 4th, and Dec. 26th, 1877, and of letters, S. C. Case, cashier, to Geo. L. Otis, cashier, dated Nov. 21st and Dec. 17th, 1877, produced and hereto attached, marked "Jas. H. Stevenson," Nos. 136 to 142. inclusive, counsel agreeing that the same shall be considered as evidence, with the same effect as if they were original.

Witness resumes: I got both of the drafts of the 7th and 14th of Nov., 1877, within forty-eight hours of the morning of the 21st of Nov., 1877.

Question. When did you first notify the North Pennsylvania Railroad Co. with reference to the cattle called for in the two bills of lading of Nov. 7 and 14th, respectively?

Answer. According to my telegram it was on the 26th of
199 Nov.; a copy of this telegram is among those submitted, marked "Jas. H. Stevenson," No. 131; this telegram was sent in the afternoon or evening—I think it was in the evening; it was probably six o'clock in the evening or later when I sent it; it was certainly after bank hours and not earlier than 6 o'clock p. m., being after I received the telegram from Mr. Otis requesting me to send a man to look up the cattle; copy of which is hereto attached, marked "Jas. H. Stevenson," No. 127. The Blakers usually paid the drafts, part cash and part checks—sometimes all cash, but more frequently as above. They seldom paid by checks on the Frankford bank; the checks were usually checks of their customers upon banks in the city of Philadelphia, but some of them were checks of their customers on our own bank; both of these drafts were presented on the 27th of Nov., 1877, the day they were protested, to the best of my recollection.

Question. Didn't the Blakers know, before the drafts were protested, that you held them?

Answer. I suppose they knew it through the family when they

returned home, but I have no way of telling for certain
200 when they returned home. I think the first I saw of either of the Blakers was on the 27th, when I saw Wade. I seldom saw Julian, as he was generally in Philadelphia. I don't think I saw him within two weeks after the time I received the drafts. We recognized Wade Blaker as the chief business man at Newtown. He attended to the bank account. I think we were paid a small portion of some of the drafts on the Blakers by their checks on the Second National Bank of Philadelphia, at Frankford; can't tell how many times, nor what amount, but never as much as several thousand dollars, I think.

Question. Did they state to you that they drew checks upon the Second National Bank of Philadelphia, at Frankford, and would make them good by the time they were there for collection?

Answer. I can't recollect any such statement.

Question. Did you receive their checks on the Second National Bank of Philadelphia, at Frankford, which were not paid and returned to you?

Mr. Bispham objects.

Answer. I do not think any of their checks on this bank,
201 which were placed to their credit in our bank, were unpaid; there might have been a check returned unpaid, but I don't remember it now.

Question. Did you send a check by mail of J. & W. Blaker, upon the Second National Bank of Philadelphia, at Frankford, about the 15th of Nov., 1877, for upwards of thirteen thousand dollars, for collection?

Answer. I think there was a check of theirs to their brother Jno. D. Blaker, sent for collection for him, but none sent for them that I recollect.

Question. Did you telegraph to the cashier of the Frankford bank on the 16th of Nov., 1877, in the morning, to know whether such a check was good?

Objected to by Mr. Bispham.

Answer. I have no recollection of such a telegram.

Question. Did you get a telegram on the 16th of Nov., 1877, from Mr. Anderson, the cashier of the Frankford bank, saying that J. & W. Blaker's check for about $13,000.00 was not good?

Objected to by Mr. Bispham.

Answer. I may have received such a telegram, but I think that this check they gave to him was protested.

202 Question. Was not that check intended to pay the draft of Nov. 7th, 1877, for $12,287.57?

Answer. I am unable to answer that question; it was not received by us for such a purpose. I am unable to say what their intention were.

Question. You stated that the usual course of mail from Chicago to Newtown was about five or seven days; are you able to state

positively that the draft of Nov. 7, 1877, spoken of, had not been received by you on or before Nov. 16, 1877?

Answer. I stated before, in regard to the receipt of that draft, to the best of my recollection, in regard to the time of its receipt.

Q. Then you are not able to state positively that you had not then received that draft?

Answer. I had not, to best of my recollection.

Question. Had you, at the bank or elsewhere, any record or minute of any sort showing the date of the receipt of that draft of Nov. 7, 1877?

Answer. I don't know that I have, as it is not our custom to take a memorandum of sight or direct drafts.

203 Question. Do you know that you have not any such record or minute?

Answer. I am satisfied that I have not. We always attended to these sight drafts at once and made no record of their receipt.

Question. Have you any knowledge of having written a letter acknowledging the receipt of this draft?

Answer. I have no recollection of any letter previous to Nov. 21st, 1877, when I wrote and telegraphed.

Question. Are you in the habit, at your bank, of receiving drafts for very large sums of money and not acknowledging their receipt?

Answer. If they are time drafts we acknowledge them; if they are sight drafts we act on them and then advise them of the result.

Question. When there was no immediate result, how long did you wait before notifying the parties?

Objected to by Mr. Bispham.

Answer. I don't know how to answer your question, because it looks like an impossibility, as there must be a result one way or the other.

Question. How long did you commonly wait for such a result?

Objected to by Mr. Bispham.

204 Answer. That was owing to the circumstances; sometimes we wait twenty-four hours.

Question. Sometimes forty-eight hours?

Answer. If it was a draft not requiring to be protested we might wait longer.

Question. Can you tell when J. & W. Blaker left home? They were not at home — you telegraphed on the 21st November.

Answer I can't tell when they left home.

Question. Were they, or either of them, at home to receive drafts sent from Chicago on the 31st of October and on the 24th of October?

Answer. They must have been at home, as the drafts were accepted and paid; those were large drafts; one was paid on the 1st and the other on the 10th of November, as near as I can tell. John D. Blaker and Sarah M. Blaker endorsed for J. & W. Blaker, sometimes for considerable sums. I can't say whether the $13,000 check

upon the Second National Bank of Philadelphia, at Frankford, which has been spoken of, was to pay for any of those endorsements.

I have no way of knowing whether John D. Blaker owed J.
205 & W. Blaker $13,000 at any time.

Cross-examined by counsel for plaintiff:

Question. From your statement as to the course of collection of the drafts prior to Nov. 7, 1877, I understand you to say that you gave due notice to the Blakers, in the regular course of business, of the receipt of these drafts, and that they were promptly paid by the Blakers?

Answer. Yes, sir; that is so; previous to the two drafts of Nov. 7th and 14th, 1877.

Question. Then, as the drafts were promptly paid, you had no occasion whatever to notify the North Pennsylvania railroad, or the North Philadelphia drove-yard, or any other parties, that you held bills of lading accompanying the drafts?

Answer. No, sir; these bills of lading were all endorsed and we surrendered them to the Blakers when they paid the drafts, but in no case until the drafts were paid. The drafts show by the endorsement on the back that they passed through our bank.

Question. You stated that these drafts were paid about
206 five or seven days after their date; this was the time, was it not, consumed in their transmission by mail from Chicago?

Answer. Yes, sir.

Question. You have stated that under instructions from your Chicago correspondent you remitted the proceeds of these drafts to their credit at New York, and that the Chicago bank would not learn until thirteen or fourteen days after the date of the draft that it had been collected and placed to their credit; is that so?

Answer. They would not learn until that time that it was to their credit—that is, that it had been actually placed to their credit in New York. If I notified them that the draft had been paid, which was our custom, they would know a day or two sooner.

Question. Then there was nothing unusual in the circumstance that the Chicago bank did not hear of a draft which they had forwarded for collection for twelve or thirteen days?

Answer. Yes, sir; there would be nothing unusual in that.

Question. What inquiries did you make after the Blakers between Nov. 21st and 26th, 1877?

207 Answer. They did not come to time and I went to see them in person, and ascertained that they would not be home till the last of the week. I don't know positively what day I went to see them, but think it was the 24th or 25th of November, 1877.

Question. Look at the telegram of Nov. 21st from yourself to Mr. Otis, and state whether it was before or after sending that telegram that you went to see the Blakers.

Answer. After. Some of the family were in town next morning after the date of the telegram—no; that is not correct—they were in town the day of the telegram, in the morning; it was early in the morning, and it was after I saw them that I sent the telegram.

On Tuesday evening, Nov. 20th, 1877, they were expected in town, according to the word I received from their place; they did not come. I was about to go to see them a Wednesday morning, Nov. 21, 1877, and one of the family came to town and told me they were not at home. I was in communication with the family every day between the 21st and 26th of November, 1877, going once to
208 their place in person. Up to the 26th they had not returned.

Question. Did you send any letters or telegrams to the Chicago Bank between Wednesday, Nov. 21st, and Monday, Nov. 26th, on the subject of the Blaker drafts?

Answer. I don't think I sent any; all the telegrams are here, and I don't find any between those dates.

[Question.] When you sent your telegram of Nov. 26th, 1877, to the general freight agent of the North Pennsylvania Railroad Co., were you aware that the cattle had already been delivered without the production of the bill of lading?

Answer. I do not think I was; the bills of lading were then in my possession.

Re-examined by counsel for defendant:

Question. Did not Wade Blaker come to Newtown on the 16th of Nov., 1877, in the afternoon, the day that the check for $13,000 and upward of J. & W. Blaker, in favor of Jno. D. Blaker, was presented at the Second National Bank of Philadelphia at Frankford?

Answer. No, sir; not to my recollection.

Question. Did you see him on that day?

209 Answer. I do not remember seeing him on that day.

Question. Did Jno. D. Blaker come to your bank on that day?

Answer. I can't say that I have any knowledge of his being there, or any of the Blakers, on that day.

Question. Had the check of $13,000 spoken of been placed to the credit of John D. Blaker in your bank?

Objected to by Mr. Bispham.

Answer. I do not remember whether it was placed to his credit or merely for collection.

Question. Did any of the Blakers, or any one else, offer to pay that check or make good the amount of that check at your bank?

Answer. Not to my knowledge.

Question. Did the Blakers, or anybody for them, offer for deposit in your bank, on Nov. 16, 1877, or afterwards, a check or draft of the Second National Bank of Philadelphia at Frankford, dated Nov. 16, 1877, for $11,623?

Answer. Not to my knowledge. I don't recollect of any such offer, nor did John D. Blaker. I found out, on the evening of Nov. 19, 1877, that the Blakers were not at home; I mean J. & W. Blaker; they did not come into town that evening, which
210 was a Monday, as they usually did. I can't positively say who informed me of their absence, but it was some of the family; I think it was Clark, who lived with the family, but am

not certain that he lived with them at this time. What I mean by the family was the mother, the daughter, and the four sons. Two of the sons, John D. and Wade, lived with the mother; Julian lived with them when not in Philadelphia. I think it was Jno. D. Blaker that told me that J. & W. Blaker was not home, but am not certain. I told him that these drafts had arrived, or that a draft had arrived, for at time I think there was but one. He said they expected Wade home that evening. I can't tell who informed me of the failure of J. & W. Blaker; some one from the city had stated it in the street on the 26th of Nov. 1877.

S. C. CASE.

No other witness being produced, the taking of depositions herein is adjourned till Tuesday, June 25, 1878, at 10 o'clock p. m.

J. H. STEVENSON, *Com'r.*

211 OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
TUESDAY, *July* 9, 1878.

At 1 o'clock p. m. met pursuant to adjournment. No witness being produced, the taking of depositions herein is adjourned till Wednesday, July 10th, 1878, at 1 o'clock p. m.

JAS. H. STEVENSON, *Com.*

OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
WEDNESDAY, *July* 10, 1878.

At 1 o'clock p. m. met pursuant to adjournment, both counsel being present.

Mr. SAMUEL C. CASE, recalled on behalf of the defendant, deposeth as follows:

Question. You have stated in your previous examination that upon your return to Newton you would examine the papers of your bank, and ascertain whether or no you had any envelopes which had contained letters from the Commercial National Bank, of Chicago, received in November, 1877. Have you made such an examination?

Answer. I have, and I have found four envelopes; three in November and one in December, 1877. (Envelopes produced.)

212 These are the envelopes which I hold in my hand, copies of which are hereto annexed, marked "Jas. H. Stevenson," Nos. 147 to 150, inclusive, which it is agreed to be received as evidence with the same effect as if the originals were hereto attached. Witness resumes: I have found no other letters received by me in November or December, 1877, save those already produced, and have found no letter bearing date between November 7th and 14th, 1877. I have nothing to show what letters were covered by these envelopes. It might be possible that I had a letter dated Nov. 13, 1877, but I have examined all our letters and can't find any of that date. I can't say that I am refreshed in reference to the draft of Nov. 7, 1877, by these envelopes.

Question. You have stated in your previous examination that the drafts of Nov. 7 and 14th, 1877, were received within forty-eight hours of each other. Is that your present recollection?

Answer. Yes, sir; the one of the 7th was received on the 19th of Nov., I think, and the draft of the 14th was received in the afternoon of the 20th, or in the morning of the 21st.

213 The check of $13.360, which was received by us for collection from Jno. D. Blaker, was dated Nov. 14, 1877, I think.

Question. What became of that check?

Answer. It was protested by the Second National Bank of Philadelphia at Frankfort, on which bank it was drawn, and was returned to our bank Nov. 19, 1877. It was taken up by Jno. D. Blaker that day or a day or two after, he paying the cost of protest.

Question. Have you with you a memorandum showing the state of J. & W. Blakers' ac. with your bank during the months of October and November, 1877?

Answer. I have a copy of their account during those months, or rather from October 2, 1877, to Dec. 19, 1877.

(Copy produced and offered in evidence.) Mr. Bispham objects on the ground that J. & W. Blaker's account with the Newtown bank is not evidence. No objection is made on the ground that the paper produced is merely a copy and not the original account, it being agreed by both counsel that if the original account

214 would be evidence then this copy shall be received with the same effect as the original.

Copy marked "Jas. H. Stevenson," No. 151, and hereto attached.)

We file our business letters away and keep them carefully, wrapping them up in paper to keep the dust off, and they are properly endorsed, from so and so to so and so. I have examined the bundles from October 1, 1877, to Jan'y 1, 1878, with care and have found no letter between Nov. 7th and 14th, 1877.

Cross-examined by counsel for plaintiff:

Question. Are you able to say whether the envelope postmarked Nov. 13, 1877, contained a letter when it was received?

Answer. I believe it did. I have no recollection of receiving any envelope without a letter about that date. I last looked through the files of letters on last Monday, the 8th of July, 1878, for the purpose of looking for this missing letter, but I failed to find it. We do not keep press copies of letters sent. We keep what we call a letter book, in which we keep a copy of the items specified in our correspondence, but not copies of the entire letter.

215 Question. Have you looked at the book to see whether it contains any acknowledgement of the receipt of a letter of Nov. 13, 1877?

Answer. I did not look specially, but will when I return home, and will advise you of the result.

Question. Did you credit Mr. John D. Blaker with the check of $13,360 of which you have spoken?

Answer. No, sir; it was deposited for collection, but was not entered in his book. He had not his book with him.

Question. How did Mr. Jno. D. Blaker take the check up?

Answer. By paying the protest; the check was then handed to him. Exhibit No. 151 shows the close of J. & W. Blaker's account, the balance to their credit being \$1 & $\frac{27}{100}$; the entry on the debit side of the ac. shows that on Nov. 12, 1877, a draft of \$12,247.76 was paid; after that payment there never was at any time enough to pay the Chicago drafts of Nov. 7th and 14th, 1877; when the draft of Nov. 7th reached us the balance to the credit of the Blakers was somewhere under \$1,200; in fact, the ac. at that time was a little short, as I find by examining this copy. This draft of Nov.
216 12th, 1877, was in favor of the cashier of the Commercial National Bank of Chicago; the 12 of November is the date of the payment of the draft and not of the draft. I think it was accompanied by a bill of lading and that the bills of lading were all endorsed by Paris Myrick.

S. C. CASE.

Counsel for defendant here closes his case.

JAS. H. STEVENSON, *Com.*

At 11 o'clock a. m., Thursday, June 27th, 1878, the parties met at the office of Jas. H. Stevenson, No. 131 So. 5th St., Philadelphia. No witnesses being produced, the taking of depositions herein is adjourned till Friday, June 28, 1878, at 11 o'clock a. m.

JAS. H. STEVENSON, *Com'r.*

OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
FRIDAY, *June* 28, 1878.

At 11 o'clock a. m. parties met pursuant to adjournment, both counsel present.

ELLIS CLARK, of the city of Philadelphia, *aged* about sixty-
217 two years of age, being produced, sworn, and examined on behalf of the defendant, deposeth as follows:

I am general passenger and freight agent of the North Pennsylvania Railroad Company and was such in 1877. I received a telegram from S. C. Case, cashier, at my office, at Front and Willow streets, Philadelphia, at 9 a. m., Nov. 27, 1877. (Telegram produced.) This is the telegram I received, and the date or time of receipt is noted thereon in my handwriting. I wrote upon it at the time of its receipt the following words:

"Rec'd d. 9 a. m., 11, 27.
"D. S. Grafly handed me this telegram."

Cross-examined by counsel for plaintiff:

I sent no reply to this telegram at that time, and can't state when I replied without referring. My impression is that I requested Mr.

D. S. Grafley to call upon Mr. Case in reference to the matter. The telegram was brought to me by Mr. Grafly. Mr. Grafly is a confidential clerk of the North Pennsylvania Railroad Company
218 under my directions.

Re-examined by Mr. WISTER:

I made inquiries with reference to the cattle mentioned in the telegram, and the reply was that they had been delivered. This was the same morning. (Telegram hereto attached, marked "Jas H. Stevenson," No. 143).

ELLIS CLARK.

DAVID S. GRAFLEY, of the city of Philadelphia, *aged* thirty-seven years of age, being produced, sworn, and examined on behalf of the defendant, deposeth as follows:

I am clerk of the North Pennsylvania Railroad Company or a freight agent in Mr. Ellis Clark's department, and was such in November, 1877. As such agent I received at my house a telegram addressed to the general freight agent, North Pennsylvania Railroad Company. The telegram was left at my house, I understood, about 9 o'clock p. m. It had been opened, and I presume it had been sent from Berks-street station. I think it had gone to Berks-street station, the office of Mr. Ellis Clark being then closed.
219 My house is 1743 Marshall street, about four squares from Berks-street station. I did nothing with the telegram that night, but next morning I took it to my office, at Front and Noble streets, and as soon as Mr. Clark arrived, which was about 9 o'clock, I handed it to him, and he made a note of the time of receipt on the face of the telegram in my presence. This is the same telegram referred to by Ellis Clark, and is marked "Jas. H. Stevenson," No. 143, and hereto attached).

Cross-examined by Mr. BISPHAM:

I was at my office on the 26th of Nov. 1877, from 8 o'clock a. m. till about half-past 7 o'clock p. m. I don't know, of my own knowledge, when the telegram was brought to my house. It was brought there, I know, some time between half past 8 and half past 10 p. m. I took supper at home after I reached there, and went out at [a]bout 8.30 p. m. I did not communicate with the drove-yard station that night. I could not have sent word by telegraph, as the drove-yard station was closed up. I don't know at what hour it closes, but
220 there is no one there at that hour that I am aware of; I mean at half past ten or 11 o'clock p. m. I was never there at that hour. I do not know of any reply being sent to the telegram. I handed it to Mr. Clark, as it was addressed to him. No inquiries whatever were made from my department about the cattle on November 27, 1877. I hadn't been at the drove-yard station on Nov. 26th, or during the previous week. We had communication by wire from our office at Front street to the drove-yard station; all way-

bills for stock received at the drove-yard station were sent to my office within one or two days, but sometimes three days.

The way-bills for the two last lots of cattle were sent to my office; I can't say when. I have no way of telling exactly. They are sent to me in an envelope without any letter accompanying them.

At the time of the receipt of the way-bills at our office no inquiries were made for the cattle called for in them. The way-bills show
221 that the cattle were shipped over the Michigan Central railroad, the Great Western, the Erie, the Lehigh Valley, and the North Penna.; at the time these way-bills were received at our office no inquiries were made for the bills of lading or receipts issued by the Michigan Central. I have been connected with the through freight department of the North Penna. railroad since 1867. I am familiar with the method of shipping freight and papers that accompany the shipments.

All the way-bills which have been produced here have been furnished from our office to Mr. Wister, counsel of the road.

Re-examined by Mr. WISTER:

We had no notice of any outstanding bills of lading upon the two lots of cattle shipped from Chicago to J. & W. Blaker on the 7th and 14th days of November, 1877, until the receipt of the telegram I have spoken of. We received no notice whatever of any bills of lading for any cattle, having been issued or outstanding, shipped for J. & W. Blaker, or for bills of lading issued or outstanding for any other cattle coming to the drove-yard station.

Recross-examined:

222 Question. Don't you know, as a railroad man, that it is customary when merchandise is shipped by rail for the consignor to get from the railroad company a bill of lading or some kind of receipt?

A. It is customary with us to give a bill of lading for all merchandize shipped, but not for live-stock. I don't know that other companies have issued bills of lading for live-stock. I was present when Mr. Sell stated in his examination that bills of lading are now required to be surrendered when stock is delivered. I heard of the requirement to deliver bills of lading after November 26, 1877. I ascertained then that bills of lading were sometimes issued.

Question. Do I understand you to say that prior to Nov. 26, 1877, you did not know, or suppose, or have any reason to believe that bills of lading or receipts of any kind ever issued for live-stock shipped from Chicago to Philadelphia?

Answer. I did not know or have reason to believe it.

Question. Did you ever make any inquiries on the subject?
223 A. I did not sir; the bills of lading which are now surrendered do not come to my office, and it does not fall within my direct charge to inquire about them. Mr. Sell is a line agent, and not in my department.

Re-examination:

Question. When you said that no inquiries were made in your department on the 27th of November about the Blaker cattle, what did you mean?

Answer. I meant that no inquiries had been made by me personally. I do not know what Ellis Clark may have done. I went to Newtown on Thanksgiving Day, Nov. 29, I think to inquire of Mr. Case, cashier of the bank, for copies of bills of lading attached to the drafts, and which he had telegraphed about. I knew then—that is, I heard—that the cattle had been delivered, and so informed Mr. Case. My office is separate from Mr. Ellis Clark's, about a square apart. Mr. Clark is general agent for the North Penna. railroad, and I am through freight agent for the same company. It
224 would fall within my department to inquire about through Western freight coming to Philadelphia.

DAVID S. GRAFLY.

THOMAS HARVEY, of the city of Philadelphia and State Pennsylvania, aged twenty-four years or thereabout, being produced, sworn and examined on behalf of the defendant, deposeth as follows:

I reside at the hotel at the North Philadelphia drove-yard, drove-yard station, North Pennsylvania Railroad station. I am Superintendent of the drove-yard. I have held that position since April 1st, 1878. I was at the drove-yard from the opening in October, 1876, as assistant to Wm. Harris, the superintendant, until about the middle of December, 1877. I knew J. & W. Blaker during that time. After the yard opened they were dealing in stock, down to November, 1877, which was their last shipment. Paris Myrick did not receive any cattle then, during that time—I mean no horned cattle. He received no cattle of any kind, save six horses.

Question. Did Mr. Myrick ever exercise any ownership or control over any cattle at the yard from October, 1876, to November,
225 1877.

Answer. Not to my knowledge. I know Paris Myrick. I made his acquaintance about a year before the opening of the yard, about October, 1875. In April, 1877, we received the six horses I spoke of. Myrick came after the horses arrived—about a week after; he stayed there until all the horses were disposed of from the stables. He did not exercise any ownership or control over any cattle during that time, nor did he give any directions as to the sale of any cattle of any sort, to my knowledge. I was living at the hotel at the drove-yard at that time, and saw Mr. Myrick constantly during his stay; he boarded at the same hotel with me, the Drove-Yard hotel. I can't state the exact time he was there; it was about a week or ten days. He left after the horses were sold. I do not know who received the money for the horses. Paris Myrick exercised the owership and control of the horses and gave directions about them.

Question. Did Mr. Myrick make any statement to you, then,
226 or at any time, about his being the cattle-buyer for J. & W. Blaker at Chicago?

Objected to by Mr. Bispham, as Mr. Myrick's statements are not evidence.

Answer. Not at that time when he was here with the horses, but he did when I was at Ridge avenue and Green street, when I was buying meat from him; that was February, 1878; he then said all he ever received for buying cattle was the drawbacks from the railroads; he was not concerned in the cattle, and never received anything but the drawbacks; he said some thought he was a partner with the Blakers, but he never got anything but the drawbacks and was not interested in any other way, shape, or form. I now refer to the cattle that came to our yard and were received by J. & W. Blaker—I mean the North Philadelphia drove-yard. I am speaking of the cattle he bought for the Blakers; I don't know what cattle he bought for the Blakers; he bought all the Chicago cattle, I suppose.

227 I suppose he bought all the cattle that came from Chicago for the Blakers; this conversation with Myrick was after the Blakers had failed; it was in February, 1878; the last shipment to the Blakers was in November, 1877; they failed after that shipment.

From the opening of the yard, in October, 1876, to November, 1877, the Blakers received cattle almost every week—sometimes two loads, sometimes four loads—fifteen, sixteen, or seventeen head of cattle to a car-load, according to the size of the cattle. They have had as high as seven and even thirteen car-loads at one shipment; thirteen car-loads was the last shipment; that was in November, 1877, the 17th of November, according to our book, when there was two hundred and one head of cattle received. On November 10th, 1877, we received two hundred and two head according to our book. On November 4th, 1877, we received one hundred and ninety-two head. On October 27, 1877, we received one hundred and eighty-two head. On October 20th, 1877, we received one hundred and ninety-four head. On October 14th, 1877, we received one hundred and ninety-eight head.

228 The drawbacks I spoke of are rebates upon the freight-bills paid back by the railroads to the shippers. He told me he received no drawbacks on four car-loads that he shipped to the Blakers over the Baltimore & Ohio railroad; that they had agreed to pay fifteen dollars a car-load for — on account of the bills of lading being mislaid. Those four car-loads came to the North Philadelphia drove-yard. I suppose the drawbacks were to have been paid by the Baltimore & Ohio Railroad Company. He never told me what drawbacks he was to receive for the purchase of those cattle. I hold in my hand the sales-book of the North Philadelphia drove-yard. It gives the week of the arrival of all cattle at the yard. If the cattle came in on Saturday they would probably not be entered till Monday. Our object was to keep each week's receipts separate; there might be a difference between the day of receipt and the day of entry of two days—the difference of Saturday to Monday. November 17, 1877, according to our book, is the date of the last receipt

229 of cattle for the Blakers. There were in that shipment two hundred and one head of cattle. The one before that, November

10th, 1877, was two hundred and two head of cattle. I will make copies of the two entries of the two last shipments of November 10th and 17th, 1877, and furnish them to the commissioner to be attached to this testimony.

Question. I understand you to say that J. & W. Blaker handled all the cattle that were sent to them to your yard?

Answer. They had the disposal of all the cattle sent to them to our yard, and nobody else exercised any ownership or control over them to my knowledge.

Cross-examined by counsel for plaintiff:

The North Philadelphia drove-yard is at the North Pennsylvania railroad and Rising Sun lane, in the city of Philadelphia; the yard is enclosed; it will hold from one thousand to twelve hundred cattle; the cattle are delivered at a siding from the cars of the North Pennsylvania Railroad Company; the siding belongs to the stock company; the cattle go from the siding right into the
230 yard. I receive the cattle from the cars at the present time; the superintendant receives the cattle. Mr. Harris was superintendant before me; Mr. Harris was superintendant at the time the shipments of November 10th and 17th, 1877, were received at the yard. He received those cattle and put them in the yard. I was present. I think the receipts were given to the railroad company for the cattle. They have a book here that will show that fact.

Witness turns to book at entry of November 10, 1877.

This is Harris' handwriting, I think, but am not positive; it is either mine or his; the name of J. & W. Blaker was taken from the freight bills; the twenty cents which is under the printed word "freight" is the "yardage" per head. We charge that if the cattle are sold in the yard, no matter how long or short a time they may have been there; there would have been no extra "yardage" if the cattle had remained several days longer, but we would charge for feed. Witness turns to entry of November 17th, 1877, and says this is my handwriting. It has the same charge of "yardage" per head as in the previous entry; these two lots of cattle were
231 disposed of at the yard by the Blakers—some of them directly and some by commission men. They gave some of out on commission, but they had the disposal of all the cattle; the Blakers gave us no receipt for those cattle; they never gave the yard company any receipts; when their bills are paid we give them a receipt. They pay the freight to us and we turn it over to the railroad company. My duties kept me at the stock-yard pretty constantly. I saw the Blakers frequently—every week, sometimes oftener. Julian Blaker was about there most.

THOMAS HARVEY.

No other witnesses being produced, the taking of depositions herein is adjourned until Friday, June 14, 1878, at 1.30 o'clock p. m.

JAMES H. STEVENSON,
Commissioner

232 THOMAS HARVEY recalled by counsel for defendant and further examined.

Mr. Harvey again produces the account book of the stock-yard company containing the statement of the cattle received on account of J. & W. Blaker on Nov. 10th and 17th, 1877, with the charges upon the same; these are correct copies of the entries about those two lots of cattle as they appear upon our account book. They are marked "Jas. H. Stevenson," No. 119, and are hereto attached. They were copied by Wilson W. Sell.

THOMAS HARVEY.

No other witnesses being produced, the taking of depositions herein is adjourned until Friday, June 21, 1878, at 1 o'clock p. m.

JAS. H. STEVENSON, *Com'r.*

233 The letters and telegrams referred to in the foregoing depositions are as follows:

H. F. Eames, pres't; Wm. H. Ferry, vice-pres.; Geo. L. Otis, cashier; F. S. Eames, ass't cashier.

COMMERCIAL NATIONAL BANK,
CHICAGO, *Nov. 7th*, 1877.

First Nat'l Bank, Newtown, Pa.

DEAR SIR: Please receive for collection and remittance to bank of New York Nat'l Banking Association of New York city for our credit, $12,287.57.

Resp'ly yours, J. & W. BLAKER.

Geo. L. Otis, cashier.

Protest and return at once all paper dishonored, unless otherwise ordered.

James H. Stevenson. No. 137.

H. F. Eames, pres't; Wm. H. Ferry, vice-pres.; Geo. L. Otis, cashier; F. S. Eames, ass't cashier.

COMMERCIAL NATIONAL BANK,
CHICAGO, *Nov. 14th*, 1877.

First Nat'l Bank, Newtown, Pa.

DEAR SIR: Please receive for collection and remittance to
234 bank of New York Nat'l Banking Ass'n for our ac. $12,448.12.

J. & W. BLAKER.

Deliver b. l. only when draft is paid.

Geo. L. Otis, D., 2d cashier.

Protest and return at once all paper dishonored, unless otherwise ordered.

Jas. H. Stevenson. No. 120.

H. F. Eames, pres't; Wm. H. Ferry, vice-pres.; Geo. L. Otis, cashier; F. S. Eames, ass't cashier.

Capital, $500,000. Surplus, $400,000.

COMMERCIAL NATIONAL BANK,
CHICAGO, *Nov.* 16, 1877.

Mr. Sam'l C. Case, cash'r, Newtown, Pa.

DEAR SIR: I notice that the drafts drawn by Paris Myrick on J. & W. Blaker, sent Oct. 25th and Nov. 1st, were out 18 and 15 days, respectively. As this is almost twice the length of time previous drafts have been out I wish to inquire where the delay is. My charges are regulated largely by the time, and I have heretofore allowed nine days as sufficient time. Can you enlighten me?

Very truly, GEO. L. OTIS, *Cas.*

235 Jas. H. Stevenson. No. 122.

The Western Union Telegraph Company.

NEWTOWN, PA., *Nov.* 21, 1877—8.55 a. m.

To Geo. L. Otis, cashier Commercial National Bank, Chicago, Ill.:

Drafts on Blakers, dated Nov. seventh, and fourteen at hand. They are absent from home and we cannot get their acceptance. Shall we protest and return or hold for acceptance?

S. C. CASE, *Cashier.*

"Jas. H. Stevenson." No. 123.

The Western Union Telegraph Company.

DATED CHICAGO, ILL., *Nov.* 21, 1877.

Received at Newton, Pa., at 12.02 p. m.

To S. C. Case, cashier, Newtown, Pa.:

Hold drafts for payment; advise by wire when paid.

9.—Paid. GEO. L. OTIS.

236 Jas. H. Stevenson. No. 141.

Edward Atkinson, president; S. C. Case, cashier.

FIRST NATIONAL BANK,
NEWTOWN, PA., *Nov.* 21, 1877.

Geo. L. Otis, Esq., cashier Commercial Nat'l —, Chicago, Ills.:

DEAR SIR: Your telegram in regard to Blaker drafts, saying "Hold drafts for payment; advise by wire when paid," received this p. m. The drafts reached us quite close together; the first must have been delayed on the route.

I am unable to reach the parties to present drafts. One of the firm we are told have gone to Chicago and the other is said to be

in Philadelphia. I am told they will be home on Thursday or Friday of this week, and through advise of your telegram will hold drafts and present soon as possible, and if not accepted return at once, if not otherwise directed by you.

Please advise immediately on receiving this if you desire
237 anything further. The parties have been quite prompt in paying the drafts until this week; they have made no deposits up to this date.

I confess I do not quite understand this action, and fear they are attempting more than they can get through with. If you are cashing these drafts I suppose you hold the collateral. I am fearful that their buyer (at Chicago) is pushing the stock onto them without regard to the markets.

Yours truly, S. C. CASE, *Cash'r.*

Jas. H. Stevenson. No. 124.

The Western Union Telegraph Company.

DATED CHICAGO, ILL., *Nov.* 26, 1877.

Received at Newtown, Pa., at 12.05 p. m.

To First National Bank of Newtown, Pa.:

Are drafts on Blaker paid yet? If not give reason. Are you holding the bills of lading? Answer.

10.—Paid. GEO. L. OTIS, *Cashier.*

238 "Jas. H. Stevenson." No. 125.

The Western Union Telegraph Company.

NEWTOWN, PA., *Nov.* 26, 1877—2.12 p. m.

To Geo. L. Otis, cashier Commercial National Bank, Chicago, Ills.:

Blaker drafts not paid; report of their failure just received from Philadelphia; have held drafts as you requested; also bills of lading.

S. C. CASE, *Cashier.*

"Jas. H. Stevenson." No. 126.

The Western Union Telegraph Company.

DATED CHICAGO, ILL., *Nov.* 26, 1877.

Received at Newton, Pa., at 5.06 p. m.

To S. C. Case, cashier, Newtown, Pa.:

Please send man to look up the stock at our expense and advise me if all right.

18.—Paid. GEO. L. OTIS, *Cashier.*

239 James H. Stevenson. No. 138.

H. F. Eames, pres't; Wm. H. Ferry, vice-pres.; Geo. L. Otis, cashier; F. S. Eames, ass't cashier.

COMMERCIAL NATIONAL BANK,
CHICAGO, *Nov.* 26, 1877.

Mr. S. C. Case, cashier, Newtown, Pa.

DEAR SIR: I have your favor of the 21st, and also your telegrams of this date in answer to mine. I wired you this morning before receiving your letter. Mr. Myrick, the drawer of the drafts, is in Philadelphia now, and I have no doubt is giving the matter all the attention it needs, but as the amount involved is large I am somewhat anxious, and hence have just wired you to send a man at my expense over to the Philadelphia yards and attend to the stock if necessary. Your letter seems to have been five days on the way.

The bills of lading holds the stock, and I presume Mr. Myrick will try to dispose of it and pay the draft.

Please keep me posted by wire.

Very truly, GEO. L. OTIS, *Cashier.*

240 "Jas. H. Stevenson." No. 127.

The Western Union Telegraph Company.

NEWTOWN, PA., *Nov.* 26, 1877—8.20 p. m.

To T. L. Huggard, cashier Shackamaxon Bank, Philadelphia.

Have man look after Blaker's cattle, if any can be found, and advise me.

S. C. CASE, *Cashier.*

"Jas. H. Stevenson." No. 128.

The Western Union Telegraph Company.

DATED NORTH PHILA. DROVE-YARD, *Nov.* 27, 1877.

Received at Newtown Pa., Nov. 27, 1877, at 2.37 p. m.

To S. C. Case, cashier 1st Nat'l Bank, Newtown, Pa.

Blaker has no cattle that I can find.

8.—Paid. T. L. HUGGARD.

241 "Jas. H. Stevenson." No. 143.

The Western Union Telegraph Company.

DATED NEWTOWN, PA., *Nov.* 26, 1877.

Received at N. W. cor. 10th and Chestnut streets, 8.22 p. m.

Rec'd 9 a. m., 11 | 27.

To general freight agent North Penna. R. R., Ph'a.:

Do not deliver cattle shipped from Chicago to J. & W. Blaker until bills lading of November seventh and fourteenth, which I hold, are presented.

26.—Paid. S. C. CASE, *Cashier.*

242 Jas. H. Stevenson. No. 129.

The Western Union Telegraph Company.

DATED CHICAGO, ILL., *Nov.* 26, 1877.

Received at Newtown, Pa., at 5.08 p. m.

S. C. Case, cashier, Newtown, Pa.:

Yours received. The drawer of the drafts is in Philadelphia, and will attend to the stock. I presume you hold the bills lading.
24.—Paid. GEO. L. OTIS, *Cashier.*

Jas. H. Stevenson. No. 130.

The Western Union Telegraph Company.

NEWTOWN, PA., *Nov.* 26, 1877.

To general freight agent North Penna. railroad, Phila.:

Do not deliver cattle shipped from Chicago to J. & W. Blaker until bills lading of Nov. 10th and fourteenth, which I hold, are presented.

S. C. CASE, *Cashier.*

243 Jas. H. Stevenson. No. 131.

The Western Union Telegraph Company.

NEWTOWN, PA., *Nov.* 27, 1877.

To Geo. L. Otis, cashier Commercial National Bank, Chicago, Ill.:

Myrick gone home; cattle delivered to Blakers without bills lading and sold; Blakers refuse to accept drafts. Shall we protest?

S. C. CASE, *Cashier.*

Jas. H. Stevenson. No. 132.

The Western Union Telegraph Company.

DATED CHICAGO, ILLS., *Nov.* 27, 1877.

Received at Newton, Pa., at 11.45 a. m.

To S. C. Case, cashier, Newtown, Pa.:

Yours received; protest and hold for further orders. How do you understand it; are not the railroad responsible? Give me name of the company issuing bills, and are they marked original?
31.—Paid. GEO. L. OTIS, *Cashier.*

244 "Jas. H. Stevenson." No. 133.

The Western Union Telegraph Company.

NEWTOWN, PA., *Nov.* 27, 1877—2.18 p. m.

To Geo. L. Otis, cashier Commercial National Bank, Chicago, Ill.:

We protest drafts as you requested; am not sure that railroad is responsible—think doubtful; see no mark of original on bill you

sent with drafts; the bills or receipts were issued by Michigan Central, signed Wm. Geagan, agent, and say on end, This receipt can be exchanged for through bill of lading.

S. C. CASE, *Cashier.*

Jas. H. Stevenson. No. 134.

The Western Union Telegraph Company.

DATED CHICAGO, ILL., *Nov.* 30, 1877.

Received at Newtown, Pa., Nov. 30, at 6 p. m.

To S. C. Case, cashier, Newton, Pa.:

Return drafts and bills of lading at once.

9.—Paid. GEO. L. OTIS, *Cashier.*

245 "Jas. H. Stevenson." No. 135.

The Western Union Telegraph Company.

DATED CHICAGO, ILL., *Dec.* 4, 1877.

Received at Newtown, Pa., at 12.35 p. m.

To S. C. Case, cashier, Newtown, Pa.:

Have you returned our drafts and bills as requested on thirtieth?

11.—Paid. GEO. L. OTIS, *Cashier.*

Jas. H. Stevenson. No. 139.

H. F. Eames, president; Wm. H. Ferry, vice-president; Geo. L. Otis, cashier; F. S. Eames, ass't cashier.

Capital, $500,000. Surplus, 400,000.

COMMERCIAL NATIONAL BANK,
CHICAGO, *Dec.* 4, 1877.

Mr. S. C. Case, cashier, Newtown, Pa.

DEAR SIR: I wrote you about Nov. 16th in regard to the Blaker drafts, and would now like you to send me that letter or a copy of it. I think yours of the 21st was in answer to it. It re-
246 ferred mainly to the time the drafts were out. I telegraphed you on the 30th ultimo to return the drafts and bills of lading. As they have not come to hand, I again dispatched you this morning.

Very truly,

GEO. L. OTIS, *Cashier.*

Copy. 324.

E. Atkinson, president; S. C. Case, cashier.

FIRST NATIONAL BANK,
NEWTOWN, PA., *Dec.* 8, 1877.

Geo. L. Otis, Esq., cashier Commercial Nat'l —, Chicago, Ills.:

DEAR SIR: Yours of 4th received. I enclose copy of letter of Nov. 16th, as requested. I should have given a more direct reply

to this letter in mine of the 21st Nov. and thought I had until I referred to my copy of the same. Blakers live a few miles out of town, and they have been so constantly from home looking
247 after stock that it was impossible to always reach them without some little delay. The following is our record of payment of six drafts:

Jas. H. Stevenson. No. 121.

8,262.25,	paid & recom-itted	Oct.	3.
8,257.35,	" "	"	10
12,190.94,	" "	"	18
11,514.41,	" "	"	25
11,463.63,	" "	Nov.	1
12,247.76,	paid & recom-itted	"	10

The time on these differ but little, except the first and last; in the first, the time was short because they were here when the draft arrived, and the letter came direct.

In the last the letter was late in arriving, and they being absent had to be looked up. The delay in drafts Oct. 25, and Nov. 1 appears mainly in time of remittance reaching you, the first being eleven and the last six days.

The last two come one upon the other, as I wrote you. I was unable to reach them to get acceptance, and telegraphed you at once.

When draft- were delayed in reaching us, we supposed they had purchased in Buffalo, as was their custom sometimes.

Yours truly, S. C. CASE, *Cashier.*

248 324

Jas. H. Stevenson. No. 142.

E. Atkinson, president; S. C. Case, cashier.

FIRST NATIONAL BANK,
NEWTOWN, PA., *Dec.* 17, 1877.

Geo. L. Otis, Esq., cashier Commercial Nat'l Bank, Chicago, Ill.:

DEAR SIR: On Nov. 30th I wrote you inclosing two drafts under protest, also noting costs on same. In a more recent letter I inquired if drafts had been received, but fail to get any reply from you.

Please let me know by return mail whether drafts were received. If received you will oblige me by remitting am't of costs on same.

Yours truly, S. C. CASE, *Cashier.*

249 "Jas. H Stevenson." No. 140.

H. F. Eames, president; Wm. H. Ferry, vice-president; Geo. L. Otis, cashier; F. S. Eames, ass't cashier.

COMMERCIAL NATIONAL BANK,
CHICAGO, *Dec.* 26, 1877.

Mr. S. C. Case, cashier, Newtown, Pa.

DEAR SIR: Find enclosed herewith my —, 60392, on Bank of New

York for $10.00, being for protests and telegrams in the matter of J. & W. Blaker.

Your first letter was overlooked.

Yours truly, GEO. L. OTIS, *Cashier.*

250 Jas. H. Stevenson. No. 146.

Frankford. No. 2157.

SECOND NATIONAL BANK OF PHILADELPHIA,
PHILADELPHIA, PA., *Nov.* 16*th*, 1877.

Cashier of the Nat'l B'k of the Republic:

Pay to the order of Messrs. J. & W. Blaker eleven thousand six hundred and twenty-three $\frac{00}{100}$ dollars, $11,623.

JAS. ANDERSON, *Cashier.*

Endorsed: Pay to the order of J. H. Kern & Bro. J. & W. Blaker, Jacob H. Kern & Bro.

"Jas. H. Stevenson." No. 147.

CHICAGO, ILL., 13 *Nov.*—4 p. m.

Return to the Commercial National Bank of Chicago if not delivered in five days.

Mr. Sam'l C. Case, cashier First National Bank, Newtown, Pa.

No. 148.

CHICAGO, ILL., 14 *Nov.*—7 p. m.

Return to Commercial National Bank of Chicago if not delivered in five days.

First National Bank, Newtown, Pa.

Bucks Co.

251 No. 149.

CHICAGO, ILL., 27 *Nov.*—7 a. m.

Return to the Commercial National Bank of Chicago if not delivered in five days.

First National Bank, Newtown, Pa.

Bucks Co.

No. 150.

CHICAGO, ILL., *Dec.* 4—4 p. m.

Return to the Commercial National Bank of Chicago if not delivered in five days.

First National Bank, Newtown, Pa.

Bucks Co.

252 EXHIBIT "C."

PHILADELPHIA, *Nov.* 19, 1877.

Messrs J. & W. Blaker to North Phila. Butchers' and Drovers' Live Stock Yard Association, Dr.

Freight Bills.

Cattle, 187	1,560 57
Sheep	37 40
Hogs	
Hay, 2,540	38 10
Corn, 42	52 50
Oats, chop	12 50
Bran	
Salt	1 75
	$1,702 82

Received payment.

HUGGARD.

253 EXHIBIT "D."

Sales of Cattle Nov. 12th for Blaker & Bro.

3	N. Cohen, 4,300—6	258 00
5	" 6,610—6, 5 off	391 60
7	A. Frieday, 9,525—5 & 3-4, 7 off	540 68
1	Bunkert, 1,305—5 & 3-4	77 62
1	L Weigle, 1,175—5 & 3-4	67 55
2	C. Snyder, 2,420—5 & 5-8	136 10
8	H. Kerner, 10,680—5 & 5-8	600 97
1	" 1,305—5 & 1-8	66 87
	L. Sheppert, 7,735—5 & 1-2	425 82
5	Huttelock, 6.620—5 & 1-2	364 10
2	Billow, 2,270—5 & 3-8	122 00
5	Hassefres, 6,175—5	309 00
1	Curesebman, 1,150—5	57 50
6	R. Levi, 7,425—5	371 25
2	Little, 2,185—5 & 1-2	121 17
55		3,908 58
	Commission	110 00
	Che'k	3,798 58

254 "D."

Sales Nov. 19, 1878, *for Blakers & Bro.*

5	N. Cohen, 7,100—5 & 3-4	408 25
6	L. Weinberg, 8,750—5 & 3-4, 3 off	500 12
1	L. Weigley, 1,255—5 & 5-8	70 58
2	Kilyan & Sheetz, 2,800—5 & 5-8	157 50
2	C. Snyder, 2,420—5 & 1-2	133 10
8	H. Kerner, 10,855—5 & 1-4	569 88

2	Wm. Billew, 2,455—5 & 1–4	128 88
3	Wm. Eckstine, 2,675—5 & 1–4	188 35
1	Do. do. 1,270—4 & 3–4	60 32
2	Little & Laudenberg—2,610—5 & 1–4	137 00
2	Mortiz, 2,405—5 & 1–4	131 30
5	L. Ruof, 6,510—4 & 3–4	309 18
2	H. Weber, 2,360—4 & 1–2	106 20
1	C. Fox, 1,250—5 & 1–2	68 75
4	C. Glading, 5,690—5	284 50
2	Spitz, 2,440—5 & 1–4	128 10
48		3,375 95
	Commission	96 00
		3,279 95

255 *J. & W. Blaker in Ac. with First National [Bank] of Newtown, Pa.*

1877.

	3. Draft	8,265 25	Oct. 2.	Balance	8,341 84
	3. Van Horn	158 00	" 8.	Myrick dr'ft	1,000 00
	4. Huggard	496 59	" 9.	C. & ch's	9,457 39
	5. Int. on overd'ft	84	16.	Disc't	158 60
	5. Note	500 00	16.	C. & ch's	13,189 03
	9. Int., O. D.	54	18.	"	200 00
	10. Harris	1,017 15	"	"	400 00
	10. Draft	8,257 35	23.	Disc't	1,197 75
	16. Frank	46 14	"	C. & ch's	11,913 85
	17. Harris	1,018 88	26.	M'Dowell	28 00
	18. Dr'ft	12,190 94	30.	C. & ch's	13,406 27
	23. Harris	1,477 88	"	Disc't	1,968 67
	24. Draft	1,000 00	"	Disc't	476 20
	25. "	11,514 41	31.	C. & ch's	689 93
	30. Harris	1,460 49	Nov. 2.	"	520 00
	31. N. Co.	823 80	6.	"	13,875 40
	1. Note	3,000 00	7.	Linton	27 75
	3. Ch. & dr'ft	12,663 63	8.	Disc't	997 50
	5. C. & G.	21 50	27.	"	611 51
	6. Linton ret'd	37 00			
	6. Ch's	1,647 01			
	7. Anderson	25 00			
	9. Hids. Asso. ret'd	48 41			
	12. Draft	12,247 76			
	12. French, ch. & costs	237 17			
Dec.	7. Hellings, ch. & costs	301 68			
	9. Telegram & int.	4 00			
	Balance	1 27			
		$78,459 69			78,459 69

256 It was then agreed between the counsel for the plaintiff and defendant that all the depositions of witnesses on both sides used in the case of The Commercial National Bank of Chicago *vs.* The Michigan Central Railway Company shall be used in evidence.

Said depositions are as follows:

OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
FRIDAY, *Aug. 2nd*, 1878.

At 10 a. m. met pursuant to adjournment.

SOLOMON LEVI, of the city of Philadelphia, aged about fifty years, being produced, sworn, and examined on behalf of the plaintiff, deposeth as follows:

I am a drover and buy and sell cattle. I have been in the business sixteen or seventeen years. I buy cattle in the old drove-yard in West Philadelphia and sell in the new drove-yard on the North Penna. railroad, city of Philadelphia. I buy and sell in both these yards. I sold some cattle for the Blakers on the 12th and 19th of November, 1877, at the North Philadelphia drove-yard; all I know is they always had their cattle from Chicago. I sold the
257 cattle on the 12th of November from 6 cts. down to 5 cts.; average about 5 & ½ cts. or a little more per pound. I sold about fifty-five head that day; the price came to $3,908.58, including the commission. I sold forty-eight head on the 19th of November, the average price being about 5 & ¼ cts. per pound; this sale realized $3,375.95, including commissions. In settling with the Blakers I deducted my commissions; the amount of these sales, less the commission, I handed to the Blakers; these sales were at the market rates; this is what the cattle were worth; some of the cattle were in my pens; they were scattered all around, but were all in the North Philadelphia drove-yard. (Copy of bill of sales taken from the sales-book produced, which is hereto attached, marked Exhibit "D.")

Cross-examined by counsel for defendant:

I do not know which of the Blakers was present at the sale. I gave the check to one of the Blakers, but don't remember which. I sold cattle for the Blakers for about six months previous to that time, off and on. I always received the cattle from the same
258 man, and he was one of the firm of J. & W. Blaker. I never saw any other person have charge of the cattle. All I know is that the cattle came from Chicago. I only heard this; don't know of my own knowledge. I think these cattle arrived on Sunday and were sold on Monday. The cattle were scattered all over the yard because one pen would not hold so many. The cattle were put in the pens by the yard-master or head man of the yard. The cattle put in the different pens in the yard were put in as cattle of J. & W. Blaker. The check drawn in payment of these cattle was

drawn in the name of the Blaker firm. It was always drawn so that they got the money.

(Sig.) S. LEVI.

259 JAMES CLEMSON, of the city of Philadelphia, aged about fifty-six years, being produced, sworn, and examined on behalf of the plaintiff, deposeth as follows:

I am a dealer in cattle; have been in the business for twenty years past. I was dealing at the North Philadelphia stock-yard in November, 1877. I sold cattle at that yard on the 12th and 19th of November, 1877, for J. & W. Blaker. I have my sales-book present. (Book produced.) I made these entries at the time of the sales. I sold on commission for the Blakers. I sold thirty-two head of cattle Nov. 12th, 1877, [at] from 4 & ¾ cts. to 5 & ¾ cts. per pound; total sales, $2,113.04. This was the market value of the cattle as near as I could get for them. I paid this money, less commission, to the Blakers. I sold thirty-five head of cattle on the 19th of Nov., 1877. Thirty-two of these were on commission; the other three the Blakers sold themselves, and I took the sale and gave them the money for them. The gross amount of this sale is $2,616.12. The cattle sold at 5 & ⅛ cts. to 6 & ¼ cts. per pound. These were the market prices that day.

260 The proceeds of this sale I paid to the Blakers, after deducting commissions. These cattle were all sold at the North Philadelphia drove-yard.

Cross-examined by counsel for defendant:

I had been selling for the Blakers for some time before that, but can't say how long. I never knew anybody in those sales but J. & W. Blaker. The cattle were in different pens, scattered around through the drove-yard; these cattle were sold in the usual ways. I had always sold cattle for the Blakers before. I don't know where the cattle came from, of my own knowledge, but it was generally understood they came from Chicago.

(Sig.) JAMES CLEMSON.

261 At 10 o'clock a. m. met pursuant to adjournment, but no witnesses being produced and it being the day fixed for the centennial celebration at Valley Forge, the taking of depositions herein is, by agreement of counsel, adjourned until Thursday, June 20th, 1878, at 3 o'lock p. m.

(Sig.) JAS. H. STEVENSON, *Com'r.*

OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
THURSDAY, *June* 20, 1878.

At 3 o'clock p. m. met pursuant to adjournment, both counsel being present.

ABRAHAM KATZ, of the city of Philadelphia, about thirty-three years of age, being produced, sworn, and examined on behalf of the defendant, deposeth as follows:

I reside at No. 1215 Mascher street, Philadelphia. I am a cattle broker; I transact business at the North Philadelphia drove-yard; I transacted business there from the opening of the yard in October, 1876, until the present time. I knew Julian and Wade Blaker
262 from about a month after the opening of the yard till the present time. They were transacting business at the stock-yard—dealing in cattle—giving them to drovers to sell on commission and selling some of their own cattle. Towards the last they gave out most of the cattle to be sold on commission. I am not certain of the firm name under which they dealt. I think it was Blaker & Bro. I know they were both there. I have bought cattle from both of them. I know Paris Myrick. I made his acquaintance either here in Philadelphia, at the drove-yard, or in Chicago; can't tell which. It is about a year ago or over since I first met him; I don't think it is over a year.

Question. Did Julian or Wade Blaker make any statement to you as to who was their Chicago buyer?

Question objected to by Mr. Bispham.

Answer. Yes, sir; Julian Blaker did; he told me. I'm not positive that he mentioned a name—that his partner bought
263 the cattle at Chicago. I did not know who his partner was at that time. I found out afterwards. I had an introduction to Paris Myrick, I think, at the drove-yard by Julian Blaker. He said, This is the man that bought the cattle, or that buys all the cattle, or all of our cattle, at Chicago. I am not positive of the words he used. I understood from what he said that Paris Myrick was their Chicago buyer. Myrick had horses at the drove-yard at that time for sale. I could not tell how long he was there at that time, as I was only there once or twice a week—twice a week—Sundays and Mondays. I have been there three times a week. I cannot tell how often I seen Myrick there. I might have seen him several times about that time. I saw him once for certain, probably twice, either on different days or on the same day. I have seen him at the yard often since. I saw him two or three months ago after the failure of the Blakers. I can't tell for certain whether I saw
264 him at the drove-yard after the time he had the horses there [or] until after J. & W. Blaker's failure in the latter part of Nov., 1877. Since their failure I have seen him there several times.

Question. During the time that J. & W. Blaker were transacting business at the North Philadelphi drove-yard did you ever know of Paris Myrick exercising any ownership or control over the cattle which were in the hands of the Blakers?

Objected to by Mr. Bispham.

Answer. I never saw Myrick round among the cattle; — Blakers always attended to that; as far as I know Myrick had nothing to do with them here, that I know of. I have been at the U. S. cattle-yard at Chicago a good many times. I never saw Paris Myrick there but once. I have only been there once since the Blakers were

in business. I think this was after I saw Myrick in Philadelphia, but I can't be positive of this.

Question. What statement, if any, did Myrick make to you about the cattle he bought for J. & W. Blaker?

Objected to by Mr. Bispham.

265 Answer. We had a talk about cattle that he bought the week before; he thought they were worth the money he paid at Chicago, but according to the prices they brought he must have had a hard market at Philadelphia. I can't tell exactly what month or week I was there; it was in the winter time, I think, or fall of 1877; it was not quite cold weather. I understood him to be speaking of the cattle that J. & W. Blaker got. I don't think he bought any other cattle except what he bought for them. He did not state how he was paid for them.

Question. Did the Blakers ever recommend you to buy your cattle through Mr. Myrick?

Objected to by Mr. Bispham.

Answer. No, sir; he asked me what I paid a load for having cattle bought. I told him fifty cents a head. He said if I wanted a load or two a week he would have his man, or his partner, to buy them for me and would not charge me any commission. I did not know Myrick at that time, and did not know who "his man" was until later.

Cross-examined by counsel for plaintiff:

266 I have no cattle shipped to me from the West, and don't have any cattle bought there for me at present. I have had cattle bought for me in the West and have bought them there myself. I am now selling cattle for another party. I used to sell on my own account and for other parties too. I have been making my sales of cattle at the North Philadelphia drove-yard since it has been opened. I have not been doing a very large business; no business is good now; when I went to the drove-yard I went there on business as a general thing—on my own business; I never interfered with anybody's else business and I hope I never will; I can't say I was an intimate friend of Paris Myrick. I have never been in his company much. I didn't pay particular attention to his business or what he was doing. He might have attended to business at the drove-yard that I knew nothing of. I never paid any attention to what he did there. I have known the Blakers since about the time the yard was opened. I had no business
267 connections with them except that I bought cattle of them once or twice. I think I bought some of the last cattle they had at the yard. I just bought one bullock, I think. I don't think I bought any of the lot they got the previous week. The Blakers are not now in the cattle business—that is, not at the drove-yard anyhow.

Re-examined:

Question. Did you ever know any one, except J. & W. Blaker, to exercise any ownership or control over any cattle handled by them at the stock-yard except themselves.

Objected to by Mr. Bispham.

Answer. I never paid any attention whether anybody else ever attended to them or not. I always saw them give the cattle on commission themselves. I saw other people feed them. I have heard that others were interested in their cattle, but do not know for certain.

Recross-examined:

I paid not particular attention to the Blakers' cattle. I looked over them when they came in from Chicago. I was always anxious to see what class of cattle came in. I had no business in sell-
268 ing or buying the Blaker cattle except when I bought from them; other persons might have bought or sold for them without me knowing of it.

(Sig.) ABRAHAM KATZ.

269 OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
MONDAY, *July* 1st, 1878.

At 11 o'clock a. m. met pursuant to adjournment; both counsel present. No witnesses being produced, the taking of depositions herein is adjourned till Tuesday, July 2nd, 1878, at 1 o'clock p. m.

(Sig.) JAS. H. STEVENSON, *Com'r.*

OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
TUESDAY, *July* 2*d*, 1878.

At 1 o'clock p. m. parties met pursuant to adjournment; both counsel present.

JAMES ANDERSON, of the city of Philadelphia, aged about forty-six years, being produced, sworn, and examined on behalf of the defendant, deposeth as follows:

I am cashier of the 2nd National Bank of Philadelphia, at Frankford. I live on West Orthodox street, Frankford. I have been such cashier for five years. I know J. & W. Blaker. They had an ac-
270 count in our bank from Nov. 6th, 1876, until Nov. 16th, 1877. I was at the bank at 8 o'clock a. m. of Nov. 16, 1877.

Question. Did a check for $13,360, upon your bank, signed by J. & W. Blaker, come through the mail that morning?

Answer. Yes, sir; about or between 8 and 9 o'clock; it came in the morning's mail; the check was not paid, as there was not sufficient money to pay it. We had a telegram from Mr. S. C. Case, cashier of the Newtown bank.

Question. To what effect?

Objected to by Mr. Bispham on account of irrelevancy and because the telegram should be produced.

Answer. The inquiry was whether the check was good. I replied by telegram as follows: "Not near good." I do not know the time of day the telegram came. I saw two of the Blakers that day later, but I think only one of them came into the bank—at least only one of them came into my room; the one that did not come into the room was, I think, an elder brother; the one that did was
271 one of the firm of J. & W. Blaker, but I do not know his name. He asked me whether there was a check from Newtown. I do notk now that he specified the amount. I told him there was; it is probable that I stated the amount, but I am not sure.

Question. What occurred between you and Mr. Blaker at the interview?

Objected to by Mr. Bispham.

Answer. We spoke in reference to that check and the difference between the amount of it and their balance in bank; the difference was between th sum they had in bank, viz., $11,623, and the check of $13,360; the difference was in figures, $1,737. He said that if he went to Newtown he would be able to collect on the road there a sufficient amount of money to make the check good with their balance. I objected to receiving the check under those circumstances; then I proposed to them, as they were going to Newtown and would be able to make this amount good, that I should give them my draft on Philadelphia for the full amount of their balance and they could pay Mr. Case the check in Newtown and get him to telegraph me to return the check without protest. They ac-
272 cepted the proposition and I gave them my draft on the National Bank of the Republic for the full amount of their balance. I heard nothing from Newtown, and the check went to protest and was returned—I mean the J. & W. Blaker check for $13,360. I have my draft on the National Bank of the Republic.

(Draft produced and copy thereof attached hereto, and it is agreed by counsel said copy shall be received with the same effect as the original (copy marked "Jas. H. Stevenson," No. 146) subject to the objection on the part of Mr. Bispham that the draft is not evidence.)

I can't tell which of the Blakers endorsed this draft; they write very much alike. I could never distinguish the one brother from the other.

Cross-examined by counsel for plaintiff:

The check that came to us on Nov. 16, 1877, came from the 1st National Bank of Newtown, Pa.; it was accompanied by a letter, but I have not the letter with me; it is on file.

(Sig.) JAS. ANDERSON.

No other witnesses being produced, the taking of depositions herein is adjourned till Wednesday, July 3rd, 1878, at 11 o'clock a. m.

(Sig.) JAS. H. STEVENSON, *Com'r.*

273 OFFICE OF JAS. H. STEVENSON,
No. 131 So. 5TH ST., PHILADELPHIA,
WEDNESDAY, *July* 3, 1878.

At 11 o'clock a. m. met pursuant to adjournment; both counsel present.

THOMAS B. SHRIVER of the city of Philadelphia, aged about forty-four years, being produced, sworn, and examined on behalf of the defendant, deposes as follows:

I am a cattle broker and collector of freights on live-stock for the Penna. railroad and Philad'a, Wilmington & Baltimore railroad at Phila. stock-yard, 30th St. above Market street, Philadelphia.

Question. Are you acquainted with the custom of the delivery of live-stock in Philadelphia upon manifests or way-bills?

Answer. Yes, sir.

Question. What is the custom?

Objected to by Mr. Bispham.

Answer. According to our rules and customs we only wish to know that the party claiming the stock are the proper parties
274 named on the manifest. We do not demand a bill of lading in one case out of a thousand times. I have not demanded over three bills of lading since I have been in the business.

I have been in the business for seven years. On reflection, I might have collected a dozen bills of lading during that time. I can't remember the cases in which the bills were demanded, but I demanded them because I did not know the parties to whom the stock was consigned.

Question. Is there any necessity in the live-stock business for the prompt or immediate delivery of the stock?

Objected to by Mr. Bispham.

Answer. Yes, sir; market is held on a certain day or days in the week. The party wishes to sell his stock as soon as it arrives or as soon as they possibly can to save expenses. The main market days are Saturdays and Mondays. The main quantity of cattle for Saturday's market comes to us on Thursday and Friday nights, and
275 the main quantity of cattle for Monday's market comes at the same time, and some more on Saturday and Sunday. (Joint way-bills marked Jas. H. Stevenson, Nos. 87 to 98, inclusive, shown to witness, being for cattle shipped to P. Myrick, notify J. W. Blaker or J. & W. Blaker.)

Question. If such way-bills came to your yard how would you deliver the cattle called for and to whom?

Objected to by Mr. Bispham.

Answer. I should deliver them to J. & W. Blaker, they paying all

freights and charges against said cattle showing on the manifest and any other charges we might have against them for feed and yardage (joint way-bills marked "Jas. H. Stevenson," Nos. 99 to 111, inclusive, shown witness being for cattle shipped to Paris Myrick).

Question. When cattle, on previous shipments to Paris Myrick—notify J. & W. Blaker or Paris Myrick, ac. of J. & W. Blaker—during several months, had been delivered to J. & W. Blaker, what
276 would you have done with the cattle mentioned in those manifests, J. & W. Blaker being on hand to receive those cattle in the absence of Paris Myrick?

Objected to by Mr. Bispham.

I would have treated the cattle by manifest as Myrick's, but should have delivered them to Blaker had he claimed them on ac. of previous lots coming from Myrick to him, and should have taken the chances that I was making a correct delivery.

Cross-examined by counsel for plaintiff:

My official position is treasurer of the Philadelphia stock-yard, and have been such for seven years—ever since the stock-yard started. I am also a cattle broker, being one of the firm of Martin Fuller & Co.

I have an office as treasurer at the stock-yard. I have had a large experience in the business, for I am out at the stock-yard every day nearly; as a general rule, am pretty well occupied by my business.

277 Q. Have you with you any of the manifests or way-bills you receive at the Philadelphia stock-yard?

Answer. No, sir.

Question. I understand you to say that in making delivery of live-stock you only take care to deliver to the party mentioned in the manifest, and make no inquiries whatever as to whether there are any bills of lading outstanding in the hands of any one else; is that so?

Answer. When we know the parties we ask no questions.

Question. Then whether you would deliver without asking for a bill of lading would depend on your personal acquaintance with the parties calling for the cattle?

Answer. Personal acquaintance or their giving me proper reference; being satisfied I would deliver—of course I would have to be satisfied myself.

Question. If you knew the party calling for the cattle you wouldn't require a reference?

Answer. No, sir.

278 Question. Then I understand you to say that in case the parties calling for the cattle are known to you, or they furnish your with satisfactory reference, you would take the risk of delivering cattle without asking for any further vouchers?

Answer. I should deliver the cattle, they paying all charges against them.

Question. In these cases of which you have spoken in your examination-in-chief of requiring the bills of lading to be produced, I understand you to say that you were not willing to take the responsibility of making a delivery without the production of the bill of lading because the parties were not known to you or could not furnish satisfactory references; is that so?

Answer. Yes.

Question. Suppose two parties' names appear upon the manifest, to which of them would you deliver the cattle?

Answer. You'll have to show me a manifest and then I'll answer the question.

279 Question. Suppose the name of one party appears as the consignee's or owner's name in the same manner as the name of P. Myrick appears in the Exhibit No. 37, and underneath is a direction to notify another party similar to the direction notify J. W. Blaker in this exhibit; to which of these parties would you deliver the cattle?

Answer. (Looking at the way-bill or exhibit spoken of.) If bill or Exhibit No. 87 should come to me—P. Myrick, notify J. W. Blaker—I should deliver to Blaker if he were present.

Question. Then I understand you to say that you would not pay any attention to the fact that, although you delivered to Blaker, P. Myrick appeared on the manifest as the owner or consignee; is that so?

Answer. If the manifest distinctly says, under the printed column of consignee's or owner's name, "P. Myrick, notify J. W. Blaker," I should consider it a proper delivery of the stock to either

280 Myrick or Blaker, as it evidently shows on the manifest that Blaker was present to receive the stock.

Question. Point out to me upon this manifest anything that shows that Blaker was present to receive the stock?

Answer. Printed paper can't show the personal presence of any one. Printed paper can't show that thing.

Question. Then, were you not incorrect in saying that it evidently showed on the manifest that Blaker was present to receive the stock?

Answer. That is incorrect; I mean to say that if Blaker was present I would deliver to him.

Question. Is not the business of delivering cattle at the stock-yard very loosely conducted?

Answer. Yes; very.

Re-examined by counsel for defendant:

Q. I understand you to say that you must be satisfied that the person named in the manifest is the person that applies for

281 the stock, or his authorized agent?

Answer. Yes, sir.

Question. You are in receipt of cattle from all points in the West?

Answer. Yes, sir. We receive about 125,000 cattle at our yard annually. We may not receive so many this year.

Question. Is your custom with regard to the delivery of cattle

know- to those dealing at your yard, and is it, so far as you know, generally acquiesced in?

Answer. Yes, sir; it is.

(Sig.) THOS. B. SHRIVER.

282 ALFRED M. FULLER, of the city of Philadelphia, aged about forty-five years, being produced, sworn and examined on behalf of the defendant, deposes as follows:

I am superintendant of the Jersey City stock-yards, at Jersey City, and a member of the firm of Martin, Fuller & Co. We receive from 6,000 to 7,000 cattle weekly at the yards. I am acquainted with the custom of delivering cattle that are manifested to that yard.

Question. State what that custom is.

Objected to by Mr. Bispham.

Answer. We have three sale days a week, Monday, Wednesday, and Friday. The cattle for Monday come in generally on Sunday evening, those for Wednesday come in on Tuesday evening and those for Friday come in on Thursday evening. We deliver those cattle according to manifest.

Q. Do yon wait for, ask for, or require any bills of lading before they are delivered?

Objected to by Mr. Bispham.

283 Answer. Not unless it is attached to the manifest. We are governed by the manifest.

Question. I understand you to say that unless the bill of lading is attached to the manifest or noted upon it, you do not require its production and delivery?

Mr. Bispham objects to that question—1st, because a custom of the New Jersey stock-yards is not evidence; and, 2nd, because the witness has said nothing about the bill of lading being noted on the manifest.

Answer. Yes, sir; sometimes when no manifest has arrived with the cattle we do deliver upon the bill of lading, when the party asks for it, taking the responsibility as to the freight and charges. I would not take such responsibility if I did not know the man. We receive cattle at the New Jersey stock-yards from all parts of the West and South, too.

Question. Is your custom with reference to the delivery of
284 cattle known to those dealing at your yard, and is it generally acquiesced in?

Objected to by Mr. Bispham.

Answer. Yes, sir.

Cross-examined by counsel for plaintiff without waiver of objection:

Question. Would you deliver cattle which had been accompanied by a manifest without requiring the production of a bill of lading in cases in which the party calling for the cattle was not known to you?

Answer. I would be governed by the manifest. I'd ask for no bill of lading. I'd want the party to whom the cattle were consigned to be identified if I did not know him.

Question. Then I understand you to say that all you would require would be that the party named in the manifest should call for the cattle and pay the charges. Is that so?

Answer. Yes; unless I was notified that there was a bill of lading following them.

Q. You know, do you not, that bills of lading are usually
285 given by railroads on shipments of cattle?

Answer. The shipper gets what I call a manifest or paper with certain conditions on it releasing the railroad. I mean a contract limiting the liability of the railroad.

Question. I understand you to say that you would deliver cattle without requiring the production of the release bill that the shipper gets?

Answer. We would. We would not require the production of it; they often bring it to us, but we pay no attention to it.

Question. What would you call a paper such as that marked Exhibit No. 87?

Answer. I'd call that a manifest or freight bill. We are governed by that; that is the paper we rely upon. If this bill is presented and the man is identified we give him up his stock, provided he pays the charges and we have not been notified that there is anything against them, a draft or anything.

Question. Don't you know, without being specially noti-
286 fied in every case, that the shipper has received what you call a release bill or manifest?

Answer. That's the supposition. I can't say positively that he does; it is a receipt containing a release to the company.

Question. Then I understand you to say that although you may suppose that such a document has been issued and is outstanding you do not ordinarily require its production?

Answer. Yes, sir; that is so.

Question. Look at joint way-bill No. 110 and state to whom you would have delivered the cattle called for in it.

Answer. I would have delivered them to Paris Myrick. I have been connected with the New Jersey stock-yard for about five years. We get cattle from the Erie railroad, Penna. railroad, Midland railroad, and New Jersey Central, and sometimes from the New York Central.

(Sig.) A. M. FULLER.

287 No other witness being produced, the taking of depositions herein is adjourned till Friday, July 5th, 1878, at 1 o'clock p. m.

(Sig.) JAS. H. STEVENSON, *Com'r.*

288 And thereupon the learned judge charged the jury as follows:

GENTLEMEN OF THE JURY: After having heard the evidence in this cause and listened to the suggestions of the defendant's counsel, I am satisfied that the plaintiff upon the facts as presented by both sides is entitled to your verdict for the amount of his claim. In the view of the law at present adopted, this is the result which I have reached. Legal questions have been raised of importance, the consideration of which is reserved, and if the court shall hereafter be of opinion that the defendant's view of the law is correct, the court may enter judgment in his favor notwithstanding the verdict.

289 And thereupon the counsel for the said defendant, did then and there except to the aforesaid charge and opinion of the said court; and inasmuch as the said charge and opinion so excepted to do not appear upon the record, the said counsel for the said defendant did then and there tender this bill of exceptions to the opinion of the said court, and requested the seal of the judge aforesaid should be put to the same, according to the form of the statute in such case made and provided. And thereupon the aforesaid judge, at the request of the said counsel for the defendant, did put his seal to this bill of exceptions, pursuant to the aforesaid statute in such case made and provided, this 16th day of July, A. D. 1884.

WM. BUTLER. [L. S.]

290 (Endorsed:) No. 36. April sess., 1883. C. C. of U. S. The Commercial National Bank of Chicago *vs.* The North Penna. Railroad Co. Bill of exceptions. Filed July 16, 1884.

291 In the Circuit Court of the United States in and for the Eastern District of Pennsylvania, in the Third Circuit. April Sess., 1883.

THE COMMERCIAL NATIONAL BANK OF CHICAGO, a Corporation Located and Carrying on Business in the State of Illinois,
vs.
THE NORTH PENNSYLVANIA RAILROAD COMPANY, a Corporation Located and Carrying on Business in the State of Pennsylvania.
} No. 36.

Know all men by these presents that we, The North Pennsylvania Railroad Company and The Philadelphia Trust, Safe Deposit and Insurance Company are held and firmly bound unto the Commercial National Bank of Chicago in the full and just sum of fifty-five thousand dollars, to be paid to the said The Commercial National

Bank of Chicago, their certain attorney, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our successors, heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this first day of July, A. D. 1884.

Whereas lately, at a term of the circuit court of the United States in and for the eastern district of Pennsylvania, in the third circuit, in a suit depending in said court between The Commercial National Bank of Chicago and The North Pennsylvania Railroad Company, entitled as above, judgment was rendered against the said defendants, and the said defendants having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed
292 to the said The Commercial National Bank of Chicago, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday of October next ensuing:

Now the condition of the above obligation is such that if the said the North Pennsylvania Railroad Company shall prosecute said writ of error to effect and answer all damages and costs if *they* fail to make *their* plea good, then the above obligation to be void; else to remain in full force and virtue.

Witness the seal of the company:

F. A. COMLY, *President.* [SEAL.]
Attest: J. A. WISE, *Secretary.*
THE PHILADELPHIA TRUST, SAFE DEPOSIT AND INSURANCE COMPANY.
J. L. ERRINGER, *Pres.* [SEAL.]
Attest: W. L. DU BOIS, *Secretary.*

Sealed and delivered in presence of—

_____ _____.

Approved:

WM. BUTLER, *Judge.*

[Endorsed:] No. 36. April sess., 1883. Circuit court United States. The Commercial National Bank of Chicago *vs.* The North Pennsylvania Railroad Company. Bond *sur* writ of error. Filed July 1, 1884.

293 UNITED STATES OF AMERICA, *Eastern District of Pennsylvania* } *sct:*

I, Samuel Bell, clerk of the circuit court of the United States of America for the eastern district of Pennsylvania, in the third circuit, do hereby certify the foregoing to be a true and faithful copy of the original pleas and proceedings in the case of The Commercial National Bank of Chicago *vs.* The North Pennsylvania R. R. Co., No. 36, April sess., 1883, on file and now remaining among the records of the said court in my office.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said court, at Philadelphia, this twenty-eighth day of July, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of these United States the one hundred and ninth.

[Seal U. S. Circuit Court, E. D. Pennsylvania.]

SAMUEL BELL,
Clerk of C. C.

Endorsed on cover: E. Pennsylvania C. C. U. S. No. 292. The North Pennsylvania Railroad Company, plaintiff in error, *vs.* The Commercial National Bank of Chicago. Filed 12th September, 1884.

123-729

Office Supreme Court U. S.
FILED.
OCT 7 1887
JAMES H. McKENNEY.
CLERK.

No. 33. October Term, 1887.

Supreme Court of the United States.

The North Pennsylvania Railroad Company,
Plaintiff in Error,

vs.

The Commercial National Bank of Chicago,
Defendant in Error.

Brief for the Plaintiff in Error.

WM. ROTCH WISTER,
GEO. F. EDMUNDS,
Of Counsel for Plaintiff in Error.

ALLEN, LANE & SCOTT, PRINTERS, PHILADELPHIA.

Supreme Court of the United States.

The North Pennsylvania Railroad Company, Plaintiff in Error,

vs.

The Commercial National Bank of Chicago, Defendant in Error.

October Term, 1887.

No. 33.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

The North Pennsylvania Railroad Company, plaintiff in error, is a corporation of the State of Pennsylvania, its line extending from Bethlehem, Lehigh county, to Philadelphia, both in the State of Pennsylvania, a distance of fifty-five miles. Said company is a common carrier of passengers and of ordinary freight, including live stock.

In November, 1877, and for some time previous, Paris Myrick had been buying beef cattle in Chicago and sending them on the Michigan Central Railroad and several other roads to Philadelphia, where they were delivered to the North Philadelphia Butchers' and Drovers' Live Stock Yard Association. The Stock Yard Association is a corporation existing under the laws of Pennsylvania, with no connection with the North Pennsylvania Railroad Company except the physical connection of railroad tracks from the railroad into the Stock Yard Association's cattle yards.

The route used was made up of four distinct railroad companies and the Stock Yard Company, neither of which had any

connection with the other except the physical connection of tracks which enables cars to pass from one company's road to the next in order, until the delivery of the cars and of the cattle contained in them to the last company in order, not the North Pennsylvania Railroad Company, but to the North Philadelphia Stock Yard Company.

The route used by Myrick consisted of the Michigan Central Railroad Company, the Erie Railway Company, the Lehigh Valley Railroad Company, the North Pennsylvania Railroad Company, and lastly, the North Philadelphia Butchers' and Drovers' Live Stock Yard Association. The cattle were transshipped twice en route from Chicago to Philadelphia, for rest, food, and water, the last time at Waverly, New York, where they came into the custody of the Lehigh Valley Railroad Company. At each transshipment new way-bills were issued, which contained the only notice received by the North Pennsylvania Railroad Company of the ownership of the cattle.

Each company collected its own freight and charges from the next, the North Pennsylvania Railroad Company collecting its freight and charges (for an allowance of sixty-four miles upon the total mileage), with the freight and charges of all the preceding companies, from the Stock Yard Association, which delivered the cattle.

These cattle were usually addressed, "Consigned to order of Paris Myrick, notify J. & W. Blaker, Philadelphia, Pennsylvania."

The testimony shows that Myrick was the Chicago buyer and agent of J. & W. Blaker, who were the real parties to the transactions and the owners of the cattle.

Upon making the shipments of cattle, Myrick made drafts on J. & W. Blaker through the Commercial National Bank of Chicago, and endorsed receipts of the Michigan Central Railroad Company for the cattle in blank, and left the receipts with the bank as security for the drafts. These drafts were sent for collection to the First National Bank of Newtown, doing business at Newtown, Bucks county, Pennsylvania, the home of W. Blaker, and where J. & W. Blaker paid them. Newtown is an interior town, twenty miles from Philadelphia,

and not upon any through line of railroad. When the drafts were paid the proceeds were sent to the Commercial National Bank of Chicago through New York, a city still farther away from Chicago than Newtown or Philadelphia.

This manner of dealing was entirely out of and beyond any customary mode of drawing drafts for property shipped to Philadelphia, and tending of itself to prove that the Commercial National National Bank of Chicago was depending for its payment not upon the receipts for the cattle, but upon J. & W. Blaker personally, upon whom they were so drawn.

The receipts contain a clause stating that they might be exchanged for a through bill of lading, but no one of them was ever so exchanged.

The cattle were usually shipped on Wednesdays, and arrived at Philadelphia on Sunday mornings, when they were immediately transferred in the cars as they arrived, to the Stock Yard Association. Henry Bennett, a person employed by J. & W. Blaker, was put in charge of each shipment of cattle.

The North Philadelphia Butchers' and Drovers' Live Stock Yard Association is a distinct company whose business it was to receive live stock arriving at Philadelphia via the North Pennsylvania Railroad Company, to feed and care for them and to deliver them to the proper parties, &c. This was in the daily course of business.

The various shipments of cattle for months previous to the two shipments now in question were received by the Stock Yard Association, who notified J. & W. Blaker of their arrival and delivered the cattle to them, neither Myrick nor the Commercial Bank of Chicago or its agent, ever appearing to examine them; and they were so delivered without production of the receipts of the Michigan Central Railroad Company, given, as afterwards appeared, at the times of shipment.

That the drafts previous to the two hereafter mentioned were paid in due course, always after the delivery of the cattle to J. & W. Blaker, with the money realized by the sale of the cattle (see Record, page 77), and were reported as so paid in from ten to fourteen days after the shipments.

Neither the Stock Yard Association nor the North Pennsylvania Railroad Company were ever informed that money had been raised on these shipments, nor was either company ever furnished with any carriers' receipts or other vouchers.

None of the freights were paid in advance, and there was no undertaking on the part of the North Pennsylvania Railroad Company, the defendant below, to carry these several shipments of cattle, unless such undertaking is to be inferred from the fact that that company was one of the five companies which composed the route from Chicago to Philadelphia, and the fact that receipts were given at Chicago like the ones hereinafter set forth.

The foregoing history brings us to the shipments of cattle now in question, viz.: those of the 7th and 14th of November, 1877. On the 7th of November, 1877, Paris Myrick, acting as the Chicago buyer and agent of J. & W. Blaker, shipped at Chicago on cars of Michigan Central Railroad Company two hundred and two head of cattle, and as in previous shipments taking a receipt therefor in the following words and figures:—

MICHIGAN CENTRAL RAILROAD COMPANY,
CHICAGO STATION, November 7th, 1877.

Received from Paris Myrick, in apparent good order, consigned order Paris Myrick. Notify J. & W. Blaker, Philadelphia, Pennsylvania.

Articles	Weight or Measure.
Two hundred & two (202) Cattle	240,000.

Advanced charges $12. Marked and described as above. (Contents and value otherwise unknown) for transportation by the Michigan Central Railroad Company to the warehouse at

NOTICE:—See rules of transportation on the back hereof. Use separate receipts for each consignment.

WILLIAM GROGAN,
Agent.

B.

"This Company will not hold itself responsible for the accuracy of these weights as between buyer and seller, the approximate weight having been ascertained by track scales, which is sufficiently accurate for freighting purposes, but may not be strictly correct as between buyer and seller. This receipt can be exchanged for a through bill of lading." On the back of the receipt was printed a notice. (See transcript of record, pages 9 and 10, part of which is as follows):—

"Goods or property consigned to any place off the Company's line of road or to any point or place beyond its termini will be sent forward by a carrier or freightman, when there are such, in the usual manner, the Company acting for the purpose of delivering to such carrier as the agent of the consignor or consignee, and not as carriers. The Company will not be liable or responsible for any loss, damage, or injury to the property after the same shall have been sent from any warehouse or station of the Company."

(Endorsed.) Paris Myrick.

(Erased). "Cattle within named were delivered to North Philadelphia Stock Yards."

Following this on the back of the receipt is the endorsement in blank, "Paris Myrick."

On the 14th of November another shipment was made of two hundred and two head of beef cattle in precisely the same way.

That on these two shipments of November 7th and November 14th, 1877, Myrick drew on J. & W. Blaker as before, for money equivalent to the price of the shipment in favor of the Commercial National Bank of Chicago, plaintiff below, and delivered to the bank, the railroad receipts for the cattle which are above set forth.

That the plaintiff in error received the shipments of cattle on cars at Bethlehem, the northern end of its line, and carried them over its line to the North Philadelphia Butchers' and Drovers' Live Stock Yard Association, usually four days after their shipment from Chicago, whereupon the Stock Yard Company notified J. & W. Blaker of their arrival, and delivered the cattle to them without the production of the transportation receipt given by the Michigan Central Railroad

Company, according to their invariable custom, and without any knowledge or information of any outstanding claim or pretension with regard to said cattle.

That the draft drawn in regard to the shipment of November 7th, 1877, did not arrive at Newtown, Bucks county, Pa., for acceptance or payment until on or after the nineteenth day of the same month. That in the usual necessary course of business the cattle had been delivered to the Stock Yard Association on the 11th of November, 1877, and that company delivered them to J. & W. Blaker, just as it had all the prior shipments.

Of the thirteen cars containing this shipment of two hundred and two cattle, nine were consigned by the way-bills accompanying them to P. Myrick, or P. Myerick, notify J. & W. Bláker, three cars to P. Myerick or Paris Myerick, notify J. & W. Blaker, and one car to Paris Myrick, Ac. J. & W. Blaker. From these way-bills (see transcript of record, pages 42 and 49) it distinctly appears that one of the cars containing this shipment was made upon the account of J. & W. Blaker to whom the shipment was delivered.

That in the usual and necessary course of business in the handling of live cattle, the shipment of the 7th instant was handed over to J. & W. Blaker, who were named in the original receipt of the Michigan Central Railroad Company as the persons to be notified of its arrival.

That the draft drawn in regard to the shipment of November 14th, 1877, did not arrive at Newtown, Bucks county, until the afternoon of the 20th, or the morning of the 21st of November, 1877, two or three days after the delivery of the cattle, in the necessary and usual course of business to the Drove Yard Company, and by which company they were delivered to J. & W. Blaker, named as before in the original receipt as the persons to be notified of its arrival.

The way-bills accompanying this shipment were for twelve cars of cattle, all consigned to Paris Myrick, P. Myerick, Paris Myerick, or Paris & Myerick, and each one was for the account of J. & W. Blaker, and from them it distinctly appears that the cattle were for the account of J. & W. Blaker, to

whom they were turned over not by the North Pennsylvania Railroad Company, but by the Drove Yard Company.

That J. & W. Blaker did not accept or pay the drafts drawn upon them on these two occasions, and the bank sues to recover their amount from the railroad company.

Upon the trial in the Circuit Court the Honorable Judge instructed the jury that these receipts were, in law, contracts of the defendant below, to carry the cattle to Philadelphia, and there to deliver them to the order of Paris Myrick, and that as they had been delivered without Myrick's order, the jury must find for the plaintiff below. This writ of error is brought to review that decision.

ASSIGNMENTS OF ERROR.

I.

That the learned court erred in charging the jury, as appears in the record folio 7 in the words and figures following:

"That the plaintiff, upon the facts as presented by both sides, is entitled to your verdict for the amount of this claim."

II.

That the learned court erred in not charging the jury—

That the actual duty of the railroad company (defendant below) as carrier was completed by the delivery of the cattle to the Butchers' and Drovers' Live Stock Yard Association, which was the independent and necessary bailee of the cattle, for the benefit of whom it might concern, and that the railroad company was not responsible for a misdelivery, if any there was, by the Stock Yard Association.

III.

That the learned judge erred in not charging the jury that the words "Notify J. & W. Blaker," as they appeared in the original receipts given by the Michigan Central Railroad Company, and in the absence of instructions to the contrary,

justified the North Pennsylvania Railroad Company in delivering the cattle to J. & W. Blaker, who actually received them from the Stock Yard Association.

IV.

That the learned judge erred in not charging the jury that the words "Notify J. & W. Blaker," as they appeared in the way-bills, of twelve cars of cattle shipped from Chicago, November 7th, 1877, in the absence of instructions to the contrary, justified delivery of the cattle to J. & W. Blaker, who actually received them.

V.

That the learned judge erred in not charging the jury that the words "Ac. J. & W. Blaker," as they appeared in the way-bill of one car of cattle shipped on the 7th of November, 1877, and in the way-bills of twelve cars of cattle shipped on the 14th of November, 1877, and comprising the total shipment of that date, in the absence of instructions to the contrary, justified the delivery of the cattle to J. & W. Blaker.

VI.

That the learned court erred in not charging the jury that the failure of the Commercial National Bank of Chicago to obtain a through bill of lading from Chicago to Philadelphia in exchange for the receipts given by the Michigan Central Railroad Company, which provided for such bill of lading in these words contained in said receipt, "This receipt can be exchanged for a through bill of lading" (record, page 9), was such negligence on the part of said bank as to preclude a recovery in the absence of any evidence showing notice to the railroad company, defendant below.

VII.

That the learned court erred in not charging the jury that the North Pennsylvania Railroad Company, defendant below, having delivered the cattle to the Butchers' and Drovers' Live Stock Yard Association, the next bailee in order, and beyond

and off its own line of railroad, was not responsible for the delivery of the cattle under the terms of the receipts given by the Michigan Central Railroad Company, which is as follows:—

Goods or property consigned to any place off the Company's line of road or to any point or place beyond its termini will be sent forward by a carrier or freightman, when there are such, in the usual manner, the Company acting for the purpose of delivery to such carrier as the agents of the consignor or consignee and not as carriers. The Company will not be liable or responsible for any loss, damage, or injury to the property after the same shall have been sent from any warehouse or station of the Company.

VIII.

That the learned court erred in not charging the jury that if the words "Notify J. & W. Blaker" in the original receipts did not in the absence of instructions justify the delivery of the cattle to them as matter of law, then it was a question for the jury to say, considering the nature of the cargo and the necessity for its immediate delivery to somebody, whether or not it was the exercise of reasonable diligence to deliver the cattle to them.

IX.

That the learned court erred in not charging the jury that if the words "Notify J. & W. Blaker" as they appeared in the way-bills of twelve cars of cattle shipped from Chicago on November 7th, 1877, in the absence of instructions to the contrary, did not as matter of law justify the delivery of the cattle to them, then it was a question of fact for the jury to say whether or not the cattle were properly delivered.

X.

That the learned Court erred in not charging the jury that, if the words "Ac. J. & W. Blaker," as they appeared in the way-bills of one car of cattle shipped from Chicago on November 7th, 1877, and of twelve cars of cattle shipped on the 14th of November, 1877, and comprising the whole shipment of the last date, in the absence of instructions to the

contrary, did not justify the delivery of the cattle to J. & W. Blaker, as matter of law, then it was a question for the jury to say whether or not it was the exercise of reasonable diligence to deliver the cattle to them, under the facts as they actually existed.

XI.

That the learned court erred in not holding that it was a question to be submitted to the jury in connection with Myrick's relations to J. & W. Blaker, the previous course of business on precisely similar way-bills and the nature of the cargoes, to say whether the plaintiff had not waived the production of the original carriers' receipt or of any order in writing by Myrick, and whether under the circumstances the delivery of the cattle to J. & W. Blaker was justified, by whosoever delivered them.

XII.

That the learned court erred in not charging the jury:—

That the original receipts for the cattle given by the Michigan Central Railroad Company to Myrick and by him assigned to the Commercial National Bank of Chicago, were not bills of lading for any purpose beyond a delivery to the next carrier, and that the North Pennsylvania Railroad Company (defendant below) took the cattle entirely unaffected by any agreement between Myrick and the bank (plaintiff below), and the bank having failed to procure the through bills of lading it was entitled to according to the terms of the receipts, and in the absence of any notice except what appeared in the way-bills, the railroad company was justified under the facts testified to in delivering the cattle to J. & W. Blaker.

XIII.

That the learned court erred in not charging the jury:—

That under the state of facts detailed in the twelfth assignment of error it was clearly a question of fact for the jury to determine whether the railroad company was justified in delivering the cattle to J. & W. Blaker.

XIV.

That the learned court erred in instructing the jury:—

"That the plaintiff upon the facts as presented by both sides, is entitled to your verdict for the amount of its claim," viz., the amount of the drafts of Paris Myrick on J. & W. Blaker of November 7th and 14th, 1877, with interest upon them to date, when the court should have instructed the jury that in an action of trover, the damages must be limited to the fair market value of the cattle, less freight, Live Stock Yard charges up to delivery, and the commissions for selling the cattle.

ARGUMENT.

We present to the court the following propositions:—

First.—That the learned court erred in charging the jury that the plaintiff below was entitled to a verdict for the amount of its claim.

Under this we shall consider the first, second, third, fourth, sixth, seventh, and twelfth specifications of error.

Second.—That the learned court erred in not charging the jury that it was a question for the jury to determine whether or not the delivery of the cattle to J. & W. Blaker showed under the circumstances the exercise of reasonable diligence and justifiable action by the railroad company, defendant below, or the Stock Yard Association.

Under this head we shall consider the eighth, ninth, tenth, eleventh, and thirteenth specifications of error.

Third.—That the learned court erred in not charging the jury that the words "Ac. J. & W. Blaker," as they appeared in the way-bill of one car of cattle shipped on the 7th of November, 1877, and in the way-bills of twelve cars of cattle shipped on the 14th of November, 1877, and comprising the total shipment of that date, in the absence of instructions to

the contrary justified the delivery of the cattle to J. & W. Blaker.

Under this head we shall discuss the fifth specification of error.

Fourth.—That the learned court erred in not charging the jury that in any event the damages should be restricted to the fair market value of the cattle less freight charges and commissions for their sale, and under this head we shall consider the fourteenth specification of error.

I.

As to our first proposition we submit that the receipts issued to Myrick by the Michigan Central Railroad Company were not bills of lading at common law, and when they were issued there was no statute in Illinois giving such receipts the effect of bills of lading. (See Statute of Illinois, of July 1, page 1884, section 96, ch. 114; Rev. State Ill., 878.) These receipts were exchangeable for through bills of lading, each one having these words upon its face:

"This receipt can be exchanged for a through bill of lading."

The receipts issued were like those referred to in People's Bank *vs.* Gayley, 92 Penna. St. R., 51, which were held not to be warehouse receipts such as were contemplated by the act of Assembly of Pennsylvania, of September 24th, 1866.

Had bills of lading been so issued by the proper officer of the Michigan Central Railroad Company that company would have notified the other companies forming the line, of the outstanding bills and sent copies of the bills of lading, and the company last in the chain would have required the production of the bills duly endorsed before the cattle were delivered, but receiving such way-bills as were received how could the North Pennsylvania Railroad Company even guess at the existence of outstanding bills of lading?

The cattle were transshipped twice en-route from Chicago to Philadelphia for rest, food, and water, the last time at Waverly, New York, where they came into the custody of the

Lehigh Valley Railroad Company. At each transshipment new way-bills were issued, which contained the only notice received by the North Pennsylvania Railroad Company of the ownership of the cattle.

We shall argue hereafter that way-bills for part of the first and the whole of the last shipment of cattle, on their faces justified their delivery to J. & W. Blaker, but even if the receipts issued were in some aspects equivalent to bills of lading, that they conferred title and constructive possession during the transit for which they were issued, and not more.

A master of a vessel has no right to issue bills of lading for goods not received.

Brooke *vs.* Erie Railroad Company, 41 Leg. Int., page 204; and Judge Hare, of Common Pleas, No. 2, of Philadelphia, there said that the powers of a shipping clerk of a railroad were not so large as those of a captain of a ship.

In this case the shipping clerk was authorized to issue receipts for goods received, but not to issue bills of lading, which were exchangeable for said receipts upon application to a higher authority. That is the fair inference from the words of the receipt referring to such exchange. It was held in Ill. Cent. R. R. Co. *vs.* Frankenberg, 54 Ill., 88, that if a shipper takes a receipt from the carrier with conditions limiting the liability of the carrier in such a way as it is competent for him to do, it becomes his contract as fully as if he had signed it. The plaintiff below having the receipt in its possession is bound by its terms, and has no right to the benefits of a through bill of lading without having applied for and received one.

A decision has been rendered by this court upon these identical receipts in Myrick *vs.* Michigan Central Railroad Co., 107 U. S. R., page 102, that they imposed no obligation upon the Michigan Central Railroad Company beyond delivery to the next carrier, and it follows logically from that holding, that when the receipts were discharged as contracts, that they ceased to exist as evidences of title and of the right of possession. Therefore the Michigan Central Railroad Company had a right to demand the surrender of its receipts. It had

fulfilled its contract. Myrick *vs.* Michigan Central Railroad Company follows the decisions in Babcock *vs.* Lake Shore and Michigan Southern Railway Co., 49 New York, 491; Ill. Cent. R. R. Co. *vs.* Frankenberg, 54 Ill., 88; Illinois Central R. R. Co. *vs.* Mitchell, 68 Ill., 471; Railroad Co. *vs.* Manufacturing Co., 16 Wall, 318. In this case the court said that "the rule that holds the carrier only liable to the extent of its own route, and for the safe storage and delivery to the next carrier, is in itself so just and reasonable that we do not hesitate to give it our sanction."

See also Railroad Co. *vs.* Pratt, 22 Wall., 129; Bank of Ky. *vs.* Adams Express Co., 93 U. S. R., 174; Ins. Co. *vs.* R. R. Co., 104 U. S. R., 146; Hutchinson on Carriers, section 351 *et seq.*, section 244, and section 367; Burroughs *vs.* R. R. Co., 113 Mass., 492.

The bank had the same option of taking through bills of lading that Myrick had, but neither Myrick nor the bank availed himself or itself of this privilege. Each was content to contract for delivery to the next carrier.

At the end of the Michigan Central line, or at the end of any intervening line of the route, Myrick could have demanded the delivery of the cattle on producing the receipt, and could then have reshipped them under another receipt or bill of lading.

The Ontario Bank *vs.* New Jersey Steamboat Company, 59 New York, 510, decided in 1875, is a case upon all fours with the one before the court.

There was a bill of lading issued, assignment of it, and a draft discounted by plaintiff on delivery of the bill of lading. The property was consigned to "order of the bank and advise R. L." The property was delivered to R. L., as had been done before under a similar state of facts. The bank proved a demand and failure to deliver.

Grover, J., said, page 514:—

"This was evidence tending to show a conversion which unexplained would justify finding that fact. The defendant under the answer had a right to explain this by showing an excuse for its failure to deliver and thereby repel any inference

of a conversion deducible therefrom. This it endeavored to do by evidence tending to show that it had previously delivered the wool to Logan under circumstances constituting a good delivery to the plaintiff. This was competent under the answer." And on page 516:

"Among the legal conclusions the judge finds that the authority of Logan to receive the wool had been recognized and assented to by the plaintiff, with respect to such previous shipments under similar circumstances, and that the defendants had a right to rely upon the authority of the plaintiff to take possession of the wool in dispute."

That a bill of lading issued by the initiating company binds only for the route of that company is held in Camden and Amboy Railroad Company *vs.* Forsyth, 61 Penna. St. R., 81; Babcock *vs.* Lake Sh. & Mich. So. Ry. Co., 49 N. Y., 194; and Ætna Ins. Co. *vs.* Wheeler, *Id.*, 620; and Myrick *vs.* Michigan Central R. R. Co., *Supra.*

The North Pennsylvania Railroad Company had no cattle yards, no cattle pens, and neither conveniences nor capacity to take care of cattle. The testimony shows that they delivered them to the next bailee in line and in order, viz., the North Philadelphia Butchers' and Drovers' Live Stock Yard Association, a corporation existing under the laws of Pennsylvania (see letters patent issued April 3d, 1876, and Charter-book No. 2, page 614, recorder of deeds office, Philadelphia), which had no connection with the North Pennsylvania Railroad Company except the physical connection of its tracks.

This, under the decision of this court in Myrick *vs.* Michigan Central Railroad Company, *supra*, was what it was bound to do, and if there was a misdelivery the North Pennsylvania Railroad Company is not responsible for it, and the judgment of the Circuit Court must be reversed.

Further, the words notify "J. & W. Blaker," as they appeared on the way-bills, justified their delivery to them, in the absence of instructions to the contrary.

The testimony is conclusive that the cattle were bought for J. & W. Blaker by Myrick, who was their buyer, and the course of business showed that they were entitled to receive

them. Counsel for plaintiff below relied upon Joslyn *vs.* Grand Trunk Ry. Co., 51 Vermont, 92, but it does not fully cover their contention.

In that case a bill of lading had been regularly issued (not a mere receipt), and the court held that its assignment passed title to the property covered by it. As the plaintiff neither did nor omitted to do anything that led the defendant to deliver, he was not estopped from taking advantage of such delivery.

In First N. Bank of Peoria *vs.* Northern Railroad, 58 New Hampshire, 203, a regular bill of lading had been issued; and so in Ætna Ins. Co. *vs.* Wheeler, 49 New York, 616.

II.

As to the second proposition:—

If the defendant below was not entitled to a peremptory charge in its favor, then it was a question for the jury, considering the nature of the cargoes and the necessity for their immediate delivery, to say whether or not it was the exercise of reasonable diligence to deliver the cattle to J. & W. Blaker or to the Stock Yard Association, taking into consideration the previous course of business with the Blakers in precisely similar way-bills and cargoes, and to say whether or not the plaintiff below had not waived the production of the carriers' original receipt, and under the circumstances justified a delivery to the Blakers.

See Ontario Bank *vs.* New Jersey Steamboat Co., *Supra.*

III.

As to the third proposition:—

That the learned court erred in not charging the jury that the words "Ac. J. & W. Blaker" as they appeared on the way-bill of one car of cattle shipped on the 7th of November, 1877, and in the way-bills of the whole shipment of the 14th of November, 1877, in the absence of instructions to the contrary justified the delivery of the cattle covered by said way-bills to J. & W. Blaker.

This was the decision of the Court of Appeals of New York in Dow *vs.* Perrin, 16 New York, 325, where the words used in the bill of lading were the same as those used on the way-bills of the case now before the court. The goods were consigned "to the care of Dows & Carey for account of one Mack," and the court held that they vested the title in Mack.

These way-bills were all that the North Pennsylvania Railroad Company received; all that they had knowledge of; and the goods were delivered to the party on whose "account" they were shipped.

If this New York decision was correct, which we do not doubt, then there was a good delivery as to the cattle covered by the way-bills, whoever delivered them.

IV.

That the learned court erred in not charging the jury that the damages should be restricted to the fair market value of the cattle less freight charges and commissions for their sale, and the fourteenth specification of error, *i. e.*, the damages should have been confined to the net value of the cattle at the time of the alleged conversion. This action is in trover, in which the damages must be limited as stated, and no evidence was presented by the plaintiff below showing what the property less the charges was worth in Philadelphia at the dates of the alleged conversion. The prices the cattle sold for could have been shown by the buyers at the cattle yard, most if not all of whom were examined; but the plaintiff below failed to show what the property sold for.

From the haste in which the second lot of cattle was sold after arrival these cattle may not have brought a fair price there, but can it be fair to the defendant below to instruct the jury that a verdict must be rendered for what the cattle cost in Chicago, without any allowance for two transshipments, the agistment of the cattle *en route*, and the charges for sale; in other words, that in the absence of all testimony to prove that fact, it is to be presumed as a matter of law,

that the cattle are worth whatever J. & W. Blaker's buyer chose to pay for them plus all the charges referred to? "There must be proof as to the value of the property at the time of its conversion." This is horn-book law. (See Sedgwick on Damages, 474.)

We submit that this cause must go back to the Circuit Court for proof and a very different instruction on this head.

WM. ROTCH WISTER,
GEO. F. EDMUNDS,
Of Counsel for Plaintiff in Error.

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123-121

No. 33. October Term, 1887.

Supreme Court of the United States.

The North Pennsylvania Railroad Company,
Plaintiff in Error,

vs.

The Commercial National Bank of Chicago.

Brief for Defendant in Error.

WAYNE MacVEAGH,
For Defendant in Error.

ALLEN, LANE & SCOTT, PRINTERS, PHILADELPHIA.

Supreme Court of the United States.

North Pennsylvania Railroad Company, Plaintiff in Error,

vs.

Commercial National Bank of Chicago.

October Term, 1887.

No. 33.

STATEMENT OF THE CASE.

The action was brought in the court below by the Commercial National Bank of Chicago against the North Pennsylvania Railroad Company for the conversion by misdelivery of two consignments of cattle under the following circumstances:—

Paris Myrick was a buyer of cattle in Chicago, Illinois. J. & W. Blaker were cattle dealers in business in Philadelphia. On November 7th and 14th, 1877, respectively, Myrick purchased two lots of cattle at Chicago, and shipped them over the Michigan Central Railway, the first of a number of rail carriers forming a continuous route to Philadelphia. He obtained from the Michigan Central Railway Company a receipt for the cattle consigned to Paris Myrick (notify J. & W. Blaker, Philadelphia, Pennsylvania). On the day of each shipment he drew a sight draft on J. & W. Blaker, to order of George L. Otis, cashier of Commercial National Bank of Chicago, for the value of the shipment with exchange added, and delivered it together with the railroad receipt, endorsed by him to the bank, receiving from the bank therefor the full discount of the draft.

The bank transmitted the drafts for collection, with the bills of lading attached, to its correspondent at Newtown, Bucks county, Pennsylvania. The cattle were conveyed by rail over the roads of a number of carriers to Philadelphia. The last carrier was the North Pennsylvania Railroad Company, a corporation of the State of Pennsylvania, whose line extends between Bethlehem and Philadelphia. The cattle arrived in Philadelphia on Sunday, November 11th and 18th, respectively, and were immediately delivered by the railroad company to the North Philadelphia Drove Yard Company, whose business it was to receive and care for live stock. The Drove Yard Company, shortly after receiving the cattle, unloaded them into the pen assigned to J. & W. Blaker, who during the next day, in each case, sold them and appropriated the proceeds. The cattle were delivered by the railroad company to the Drove Yard Company, and by the Drove Yard Company to the Blakers, without the production or demand of, or even an inquiry for, a bill of lading, receipt, or other token, to show the right of the recipient of the cattle to get them. The drafts, with the bills of lading attached, in the course of the mails came into the hands of the bank correspondent at Newtown, the first draft and railroad receipt being apparently delayed somewhat. The Blakers were promptly notified of the arrival of the drafts, but failed to accept or pay them, and they were protested for non-payment November 27th, 1877. The cattle were, however, delivered to the Blakers, and sold by them before the arrival of the drafts and carriers' receipts, or, at least, before notice of the arrival of the drafts and carriers' receipts was received by them.

It appeared to have been the uniform custom of the North Pennsylvania Railroad Company and the North Philadelphia Drove Yard Company, for several months previous to this shipment, to deliver similar shipments of cattle to the Blakers without demanding the production of bills of lading, or inquiring for the existence of outstanding drafts against them. It was distinctly proved, however, at the trial that there was no knowledge on the part of the Commercial National Bank of Chicago (which had discounted previous drafts of Myrick

on the Blakers in the same way as those in suit were discounted) that the cattle had been or were being delivered without the production of the bills of lading or the carriers' receipts. (Record, page 73, folio 188.) It was likewise shown that the bank correspondent at Newtown was also ignorant of such irregular deliveries. (Record, page 80, folio 205.)

The North Pennsylvania Railroad Company, although not seeing the bills of lading or carriers' receipts before delivery, was not without actual notice of the retention of property in the cattle by the shipper in himself or his endorsee, for the way-bills—fifteen in number—received by the agent of the North Pennsylvania Railroad Company, from Elmira, were marked "Paris Myrick." Wilson W. Sell, the agent of the North Pennsylvania Railroad Company at Philadelphia, testified that he himself upon the arrival of the cattle at Philadelphia, and before turning them over to the stock yard, added to the way-bills for the second lot beneath the name of the consignee, the words "A/c J. & W. Blaker." (Record, page 35, folio 102.)

Since November 17th, 1877, when the last of these misdeliveries took place, this railroad company has uniformly required the production of bills of lading before delivering consignments. (Record, page 40, folio 114.)

Upon these facts the Commercial National Bank of Chicago originally recovered a verdict and judgment against the Michigan Central Railway Company in the Circuit Court of the United States for the Northern District of Illinois. That judgment was reversed by this court (Myrick *vs.* Michigan Central Railroad Co., 107 U. S., 102), on the ground that a contract for through carriage by that company was not established by its receipt for the cattle, and that the question of whether or not there was a contract for through carriage should have been submitted to the jury to determine from the circumstances of the case. The statement of facts in that case may be referred to to supplement the statement here given.

The court below, in the present case, after the evidence was given, charged the jury that under the law, upon the facts as

established, the plaintiff was entitled to a verdict. A verdict for the plaintiff was accordingly given by the jury for the whole amount of its claim. Judgment was thereupon entered, and the present writ of error was taken.

ARGUMENT.

The elementary principle upon which the present defendant in error, as plaintiff in the court below, placed its case, was that *one who has discounted a draft drawn against a bill of lading is entitled to rely upon the fact that he holds the bill of lading through the consignee's endorsement, and that, according to the ordinary course of business, the goods cannot be obtained from the carrier except upon the surrender of the bill of lading. The carrier delivering to other than the holder of the bill of lading, even though prevailed upon to do so by the fraud or misrepresentation of the party to whom the goods are delivered, is liable to an endorsee of the bill of lading for the value of the goods.*

Jones on Pledges, sec. 273, and cases there cited;
The Thames, 14 Wall., 98;
Gibson *vs.* Stevens, 8 How., 384.

This law has never been questioned or disputed.

The transfer of the bill of lading by endorsement transfers the title to the goods, and gives to the holder of such bill of lading the sole right to them.

The tort of a carrier in delivering the goods to other than the holder of the bill of lading is well nigh defenceless, at the suit of a holder for value, when the consignor reserves to himself the *jus disponendi* of the property by having the bill of lading drawn to his own order, as was done in this case.

Dows *vs.* National Exchange Bank, 91 U. S., 618;
Farmers' and Mechanics' National Bank *vs.* Logan, 74 N. Y., 568;
Benjamin on Sales, book 2, chapter 6, page 480;
Hutchinson on Carriers, sec. 130 *et seq.*

The carrier or warehouseman receiving the goods is bound to ascertain whether a bill of lading accompanied the shipment (First National Bank of Toledo *vs.* Shaw, 61 N. Y., 283), and to hold the property until the bill of lading is presented as evidence of title in the party claiming the goods. (City Bank *vs.* Rome, W. & O. R. R. Co., 44 N. Y., 136.) Delivering without demanding the bill of lading is a delivery at the peril of the carrier (McEntree *vs.* N. J. Steamboat Co., 45 N. Y., 34). The carrier cannot plead ignorance of the existence of a bill of lading (Alderman *vs.* Eastern R. R. Co., 115 Mass., 333), or that the endorsee of the bill of lading was unknown (The Thames, *supra*). Nor can it rely for defence upon any neglect of the holder of the bill of lading to notify it of his title or to present or forward the bill of lading.

First Nat. Bank of Toledo *vs.* Shaw, *supra;*
The Thames, *supra;*
Libby *vs.* Ingalls, 124 Mass., 503.

It does not matter that the goods shipped were ultimately intended by the shipper for the party who got them.

Bank *vs.* Logan, *supra.*

Where the bill of lading is made "to order of A, notify B," as in our case, delivery to B is not a good delivery as against an endorsee of the bill of lading.

Bank of Commerce *vs.* Bissell, 72 N. Y., 615;
Libby *vs.* Ingalls, *supra;*
Wright *vs.* Northern Central Ry. Co., 8 Phila., 19;
First National Bank of Peoria *vs.* Northern Railroad, 58 N. H., 203.

The law is the same when the carrier's receipt is retained and used as a bill of lading.

A carrier's receipt gives title in the goods to the endorsee as effectually as a regular bill of lading, and the obligation of the carrier as to delivery is the same in one case as the other.

Bank of Rochester *vs.* Jones, 4 Comst., 497;
First National Bank of Cairo *vs.* Crocker, 111 Mass., 169;
Newcomb *vs.* Boston & Lowell R. R. Co., 115 Mass., 233.

And when the goods have been transferred from one carrier to another, as in our case, the last carrier is bound to deliver to the holder of the bill of lading a carrier's receipt issued by the first carrier.

Jones on Pledges, section 274;
Forbes *vs.* Fitchburg R. R. Co., 133 Mass., 154, 159;
Forbes *vs.* Boston & Lowell R. R. Co., *Id.;*
Marine Bank *vs.* ————————, 48 N. Y., 1;
Bass *vs.* Glover, 63 Ga., 745;
Libby *vs.* Ingalls, *supra;*
Newcomb *vs.* Boston & Lowell R. R. Co., *supra;*
9 Am. & Eng. R. R. Cas., note, page 82.

It is no defence to an action of this kind that, according to the custom of railroads in general, or of this railroad in particular, deliveries were usually made to the parties to be notified, or for whom the goods may have been ultimately intended, without the production of the bill of lading. Parol evidence of such a custom, varying the terms of an unambiguous written contract—the bill of lading or carrier's receipt—is incompetent.

Oelricks *vs.* Fork, 23 How., 49;
Insurance Company *vs.* Ford, 1 Wall., 456;
Joslyn *vs.* Grand Trunk Ry., 51 Vt., 92;
Farmers' & Mech. Bank *vs.* Logan, *supra;*
Bank of Commerce *vs.* Bissell, *supra;*
Farmers' & Mech. Bank *vs.* Erie Railroad Company, *Id.*, 188;
Railroad Company *vs.* Barrett, 36 Ohio St., 488.

But even supposing such evidence admissible, there is no principle by which the defendant could be relieved of its liability for this misdelivery to the pledgee of a draft discounted on the security of the bill of lading, unless knowledge of this custom to deliver to the party to be notified be brought home to the plaintiff, and it be shown that the defendant was misled by the positive misrepresentation or equally positive silence of the plaintiff into believing that he sanctioned such deliveries.

Wilson S. M. Co. *vs.* Louisville & Nashville R. R. Co., 71 Mo., 203;
Joslyn *vs.* Grand Trunk Ry., *supra.*

The evidence, it need not be reiterated, was very full and positive that neither the plaintiff below, nor any of its agents, had any knowledge whatever of the alleged previous custom of the defendant railroad company to deliver similar shipments to the Blakers without the production of the bill of lading. (Record, pages 73, 80.) Of course, therefore, it could not be claimed that the defendant was misled by the actions or the conduct of the plaintiff into supposing that it was making an authorized and proper delivery by handing over the cattle to the Blakers without demanding the evidences of title in them.

The fact undoubtedly was, as testified to by the witnesses for the defence, that the delivery of cattle at the time of these shipments was very loosely conducted by all the carrying companies (Record, page 108, fol. 280), and it needed the accident of this miscarriage to remind the present railroad company of its duty to those who trusted it with consignments.

The law being as above stated, the court below could do nothing else than instruct the jury that upon the facts proved the verdict must be for the plaintiff.

The plaintiff in error has printed in its brief sixteen different assignments of error by which it assumes to test the correctness of the judgment.

The first assignment is all that need or that can be considered. The remaining fifteen assignments must be ignored. They are all of the one kind, viz., that the court erred in *not* charging the jury specifically as the several assignments point out. At the trial there were no requests to charge according to these assignments, and there is nothing in the bill of exceptions to show that they are properly in the case. It is no ground of reversal that the court below omitted to give directions to the jury upon points of law where it was not requested at the trial. And unless the requests are so made and refused, and the fact appear in the bill of exceptions, the alleged errors cannot be noticed.

Pennock *vs.* Dialogue, 2 Pet., 1;
Storm *vs.* United States, 94 U. S., 76.

For the sake of fullness, however, the four propositions into which the plaintiff in error has grouped its various assignments may be considered and answered in their order.

First Alleged Error.—That the learned court erred in charging the jury that the plaintiff below was entitled to a verdict for the amount of the claim.

The proposition that the carrier's receipt endorsed to the bank did not pass the title to all intents and purposes the same as if a through bill of lading had been issued and endorsed, is not sustainable.

The cases of First National Bank of Cairo *vs.* Crocker, 111 Mass., 163, and Bank of Rochester *vs.* Jones, 4 Comst., 497, decide directly contrary to the contention of the plaintiff in error. In the first mentioned of these cases the Supreme Court of Massachusetts had occasion to consider the legal nature of a carrier's receipt of flour shipped from Illinois (the State of the shipment in the present case). The receipt was marked "Consigned to shipper's order, Boston, Mass." The court held, page 169: "*In legal effect, and for the purpose of explaining what is to be done with the merchandise, there can be no substantial difference between a bill of lading and a carrier's receipt.*"

The receipt in our case was the regular form of bill of lading given by the Michigan Central Railway Company for carriage of freight over its own line (page 19, folio 52). As such it was transferable by endorsement, and the endorsement passed to the endorsee title to the shipment represented by it. The receipt was not at all, as stated by plaintiff in error, like those referred to in People's Bank *vs.* Gayley, 92 Penna. St., 518. *There* a simple written acknowledgment of the receipt of certain iron by the man in charge of a wharf and signed in his individual capacity was held not to be a warehouse receipt, there being a regular form of warehouse receipt, which was not used. The agent, Mr. Grogan, who signed the receipts or bills of lading in our case was the regular shipping agent who signed the regular bill of lading form for the company in his representative capacity.

The endorsement, "This receipt can be exchanged for a through bill of lading," it is argued, implies that the paper

given was not a bill of lading. On the contrary the language very plainly shows that there was a *through* bill of lading and a *local* bill of lading called a receipt. If the receipt was not intended to be a negotiable bill of lading, as that instrument is understood, and if it had been intended that only a contract for through carriage was to be entitled to the legal status of a bill of lading, the endorsement would of course have read, "This receipt can be exchanged for a bill of lading."

But it is gravely argued that even if the receipt is practically a bill of lading it was only such while the cattle were in transit on the line of the Michigan Central Railway Company; that it ceased to be such the moment a delivery was made to the next carrier. This argument is a lame attempt to elude the legal effect of a bill of lading. A bill of lading represents the goods and its transfer by endorsement transfers title to the goods. As an instrument transferring title it could not be destroyed by the simple fact that the first carrier in line had performed its contract to carry to the end of its line. If such were the law the succeeding carrier receiving the property could appropriate to its own use or destroy it and be accountable to no one. For if the title was lost to the endorsee of the bill of lading at a certain point in the transit of the goods, he could not recover for their loss. And as title had already passed out of the shipper by endorsement of the bill of lading, *he* would be equally without status for a claim. The argument of the plaintiff in error here, it will therefore be seen, proves too much. It takes from the endorsee of the bill of lading his property and permits all railroad companies in line after the first to use it according to their wish, and no redress can be had from the last carrier which may find it convenient to hand the shipment over to the first comer who desires to unload and remove the goods.

The cases cited to show that a bill of lading binds only for the route of the first company in line (Argument of plaintiff in error, page 15) relate merely to the extent of the *contract* of that carrier. They do not tend in the slightest degree to support the novel proposition that the bill of lading endorsed by the shipper does not continue to exist as evidence of title, which the last carrier is bound at its peril to know and respect.

The New York case of Ontario Bank *vs.* New Jersey Steamboat Company, 59 N. Y., 510, is said to be "on all fours" with the present case. It was there decided that where wool shipped to order of plaintiff deliverable at a certain point, "advise B," had been delivered to B after many similar deliveries known and acquiesced in by the plaintiff, it was evidence for the jury that B was the agent of the plaintiff to receive the wool.

The distinction is of course marked between that case and our own. Here there was no knowledge or acquiescence by the Commercial National Bank of Chicago that the defendant had previously delivered cattle to the Blakers without the production of the bills of lading. (Rec., page 73, fol. 188) As matter of fact the drafts for previous shipments having been promptly paid by the Blakers to the Newtown Bank, the agent of the plaintiff, and by that bank to the plaintiff, there was no occasion for it to know the course of dealing between the railroad company and the Blakers as to delivery. (Page 80, fol. 208.)

The real points in this New York case analogous and applicable to our own were decided directly contrary to the contention of the plaintiff in error, and that case may therefore be considered, as the plaintiff in error contends, as quite on all fours with this. It was decided there that: 1. The fact that the person who got the goods from the carrier at the end of the route was employed by the shipper, and was his correspondent, and that this was known to the bank, the owner of the bill of lading, was no defence to an action for misdelivery. 2. Where goods are shipped to order of plaintiff with direction to advise B, a delivery to B is not a good delivery. 3. The fact that B had accepted drafts of the shipper did not give him title to the property shipped.

It is next contended that the North Pennsylvania Railroad Company actually fulfilled its duty in delivering the cattle to the North Philadelphia Butchers' and Drovers' Live Stock Yard Association, or Drove Yard Company, and that therefore it is not chargeable with a liability in this case. The answer to this is (1) the plaintiff in error *was in fact the last carrier in*

line, (2) the Live Stock Yard Association was the agent of the plaintiff in error, and (3) the misdelivery was directly due to the negligence of the North Pennsylvania Railroad Company in misleading the Live Stock Yard Association as to the person entitled to the shipment. William Harris, Jr., superintendent of the Stock Yard Association, testified that they were *accustomed to deliver the cattle to whomsoever the railroad company direct.* (Rec., page 62, fol. 157.) The plaintiff in error in fact directed these deliveries to be made to the Blakers, for its own agent testified that *he* had inserted the names "J. & W. Blaker" (Rec., page 56, fol. 143) in the receipts which the agent of the Live Stock Yard Association signed at the time the cattle were taken into its yard. (Rec., page 38, fol. 110.) This meant that the cattle were for J. & W. Blaker (Fol. 109). It was therefore only by the act of the railroad company that the misdelivery to the Blakers occurred.

Second Alleged Error.—That the court erred in not charging the jury that it was a question for the jnry to determine whether or not the delivery of the cattle to J. & W. Blaker showed under the circumstances the exercise of reasonable diligence and justifiable action by the railroad company or the Stock Yard Company.

Four things, it is argued, should have been submitted to the consideration of the jury. (1.) The nature of the cargoes. (2.) The necessity for their immediate delivery. (3.) The previous course of business with the Blakers. (4.) The waiver by plaintiff of the production of carrier's receipt.

The first two questions are not properly in the case. Cattle are not much more perishable than corn. There is no more positive obligation to an immediate delivery of stock than of grain. But it is not a question of prompt or tardy delivery, but of delivery or misdelivery. It was a misdelivery to deliver to any but the true owner. A railroad company *undertaking* to carry and deliver cattle is *paid* to carry and deliver cattle, and it must provide arrangements to effect such transportation and valid delivery, or it fails of its duty.

The previous course of business with the Blakers is not evidence as to this delivery, as no knowledge of previous

delivery without production of the bills of lading was brought home to the plaintiff. And there was no evidence of waiver of such knowledge to go to the jury. The evidence was the other way.

Third Alleged Error.—That the court erred in not charging the jury that the words "Ac J. & W. Blaker," as they appeared in the way-bill of one car of cattle shipped on the 7th of November, 1877, and in the way-bills of twelve cars of cattle shipped on the 14th of November, 1877, and comprising the total shipment of that date, in the absence of instructions to the contrary justified the delivery of the cattle to J. & W. Blaker.

Counsel in framing this proposition doubtless overlooked the fact, that the words referred to were inserted in the thirteen way-bills mentioned, by the agent of the defendant company itself.

Testimony of Wilson W. Sell, station agent of the North Pennsylvania Railroad Company. (Rec., page 35, fols. 101–102:—

Thirteen way-bills, dated November 17th, 1877 (one of them was in fact dated November 10th), shown witness for thirteen car-loads of cattle, eleven of them consigned to Paris Myrick, and two of them to Paris & Myrick. The above bills are marked Jas. H. Stevenson, Nos. 99 to 111. * * * The words "*Ac J. & W. Blaker*" upon these way-bills under the name of the consignee *are in my handwriting, and were not upon the way-bills when received by me.* I put them on at the stock yard.

The point cannot, therefore, be pressed by plaintiff in error without arguing the absurdity that the plaintiff below should suffer for the confessed wrong of the railroad company.

Fourth Alleged Error.—That the court erred in not charging the jury that in any event the damages should be restricted to the fair market value of the cattle, less freight charges and commissions for their sale.

This claim of error is altogether without force. The amount of the two drafts, payment of which was claimed by the plaintiff, was merely $24,735.69. (Rec., page 8, fols. 20 and 21.) The market value of the cattle, as testified to, was from four

and a half to six cents per pound. (Page 67, fol. 171.) The average of these figures is five and one-fourth cents. The total weight of the cattle, as shown by the twenty-five way-bills, was two hundred and fifty thousand pounds. (Pages 43–58). The total value in Philadelphia, the place of delivery, would therefore be about $26,250. As matter of fact the freight bills for the cattle were actually paid to the carrying companies. (Page 68, fol. 173.) So that the value of the cattle for which the railroad company was liable, was almost $2000 more than the amount of the plaintiff's claim. Even if some allowance be made for the incidental expenses of transportation over the defendant's line of fifty-five miles, it would still leave the amount actually claimed and recovered by the plaintiff much less than what it was entitled to recover on the theory of the railroad company that the value of the cattle at Philadelphia constituted the true measure of damages.

The plaintiff in error, therefore, was not prejudiced in any way by the ruling of the court that the plaintiff below was entitled to the amount of its claim, and the case cannot be reversed on this point.

It is conclusive, however, that no objection was made in the court below to the rule of the measure of damages as laid down by the trial judge, and it is the settled law of this court that an objection not taken in the court below cannot be taken for the first time in this court.

Wilson *vs.* McNamee, 102 U. S., 572;
Springer *vs.* U. S., *Id.*, 586;
Belk *vs.* Meagher, 104 *Id.*, 279;
Clark *vs.* Fredericks, 105 *Id.*, 4.

But the objections raised in the last three propositions are entirely out of the case, as already observed, and may be dismissed. And it has been shown that the court was fully justified by the elementary principles of the law of bills of lading in making the ruling that under the facts as developed the plaintiff below was entitled to a verdict. The judgment, therefore, must be affirmed.

WAYNE MacVEAGH,
For Defendant in Error.

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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, A. D 1887.

THE NORTH PENNSYLVANIA RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE COMMERCIAL NATIONAL BANK OF CHICAGO,
Defendant in Error.

No. 33.

J. A. SLEEPER
Counsel for Defendant in Error.

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ADDITIONAL POINTS FOR DEFENDANT IN ERROR.

I.

The judge of the court below disposed of the case by the following charge to the jury:

"I am satisfied that the plaintiff, upon the facts presented "by both sides, is entitled to your verdict for the amount "of his claim."

The counsel for the defendant excepted to this charge. Nothing more. He did not request the court to charge otherwise on any specific point, nor even suggest that there was any question of any specific fact which ought to be submitted to the jury.

1. The question presented by this record, therefore, is: Could the jury, upon the whole evidence, have found for the defendant or assessed the plaintiff's damages at less than

they did, and had the case been submitted to them on the evidence, and had they found for the defendant, would it have been the duty of the court to set aside their verdict?

2. To determine these questions correctly, it will be necessary to examine the evidence, and in order that that should be properly done, it is indispensable that the evidence, on both sides, or the facts established by it, be correctly understood.

3. I have read with considerable care, the brief filed by the counsel for plaintiff in error, and it seems to me they do not correctly state the facts as they were presented by the evidence on both sides, or that they accidentally omitted to state some very important facts, or misconceived the force of the evidence. I proceed to note the following:

II.

1. At page two of the brief it is said, "the testimony "shows Myrick was the Chicago buyer and agent of J. & "W. Blaker, who were the real parties to the transactions, "and owners of the cattle."

2. I submit that the testimony shows no such thing; *i. e.*, that while I think it does show that Myrick did buy cattle when the Blakers directed him to do so, and to that extent only, was buyer for them, it does not show that he was their agent, or that they were the real parties to the transaction, or that they were the owners of the cattle.

3. What the testimony does show is, that when the Blakers directed Myrick to do so, he bought cattle in Chicago; shipped them to Philadelphia consigned to his own order; took shipping receipt or shipping bills for them from the railroad company, in which they were stated to be consigned to his order, with these words added, "Notify J. & W. Blaker;" that the Blakers did not furnish Myrick with money to pay for the cattle bought, nor any expense connected with their purchase or shipment. That Myrick himself obtained the money on his draft on the Blakers, secured by the transfer of the shipping receipts, shipping

bills or bills of lading, from the Commercial National bank of Chicago, and that both Myrick and the bank expected that the Blakers would pay the drafts drawn against the shipments, when they would of course receive the shipping bills and be entitled to have the cattle delivered to them. But all parties also understood that until Blakers paid, the title to the cattle was in the bank, as holder of the shipping bill, and that not a vestige of title to any cattle bought by Myrick was in the Blakers, so long as the drafts drawn against them were unpaid.

III.

But were it true that Myrick was agent for the Blakers so that the title to the cattle was in them as they were bought, would the case be any better for the railroad company?

1. It would stand about this way: Myrick, as agent, bought the cattle for the Blakers. As such agent he shipped them to Philadelphia. He took shipping receipts or bills, or bills of lading, from the railroad company as from himself, by which he consigned the cattle "to order of Paris Myrick, notify J. & W. Blaker." This he did as agent.

2. But he had no money to pay for the cattle, and therefor, as agent, sanctioned by the course of business, he borrowed from the Commercial National Bank of Chicago the money for that purpose. To secure its re-payment he drew his personal draft on J. & W. Blaker, attached to the draft the shipping receipt or bill, name it what you will, and delivered them to the bank.

3. The legal effect of this transaction was to transfer the title to these cattle, which till then had been in the Blakers, to the bank; and until the Blakers paid the draft, that title remained in the bank, and the railroad company was bound to deliver the cattle to the bank at Philadelphia, and a delivery to Blakers was not delivery to the bank.

4. Wilson W. Sells, the agent of the railroad company, was a witness on the trial of the case. At page 35 transcript

he is shown twelve way bills, dated November 10, 1877, for twelve car loads of cattle, two of them consigned to P. Myrick, and ten to P. Myerick, all "notify J. & W. Blaker." They were numbered 87 to 98 inclusive, and are at pages 43 to 48, inclusive.

5. Also thirteen way bills dated November 17, 1877, for thirteen carloads of cattle, twelve of them consigned to Paris Myerick and one of them to Paris & Myerick. They are numbered 99 to 111 inclusive, and are found on pages 49, 50, 51, 52, 53, 54 and 55. Under the name of the consignee in these thirteen way bills was written, "ac. J. & W. Blaker."

Sell says, at foot of page 35, *the words*, "ac. J. & W. Blaker," *upon these way bills under the name of the consignee are in my handwriting, and were not upon the way bills when received by me. I put them on at the Stock Yards.* He also says on the same thirty-five pages, that all the twenty-five carloads of cattle were delivered to the Stock Yards Company by the railroad company, *i. e., by him its agent, "for J. & W. Blaker."*

6. On cross-examination, foot page 37, he says: "I don't know whose handwriting the body of the bill is in; it is done at the Waverly office, by whom I don't know." At the foot page 38, he says: "The words J. & W. Blaker' appear in all the way bills of Nov. 17, 1877, being the way bills Nos. 99 to 111 inclusive, and they are all in my handwriting.

7. At page 56 are two receipts, one dated November 11, 1877, and the other November 17, 1877. The first, J. & W. Blaker, 202 cattle. Second, J. & W. Blaker, 201 cattle; they are signed Wm. Harris, Jr., Supt.

Sell says in his cross-examination that he made these receipts and Harris signed them when he delivered the cattle to the Stock Yards Company. Harris says the same at page 69.

IV.

1. At the foot of page 5, of the brief, it is said, "that the plaintiff in error received the shipments of cattle on cars at Bethlehem, the northern end of its line, and carried them over its line to the North Philadelphia Butchers and Drovers' Live Stock Yard Association, usually four days after their shipment from Chicago, whereupon the Stock Yards Company notified J. & W. Blaker of their arrival, and delivered the cattle to them without production of the transportation receipt," etc., etc.

2. In this statement counsel omit to state that the tracks of the plaintiff in error run into the Stock Yards. That its agent delivered the cattle in both instances to the Stock Yards Company; that there, at the Stock Yards, he wrote in the thirteen way bills, which he received from the conductor of the train, Nov. 17, 1877, the words, "ac. J. & W. Blaker," and that he made out the receipts, which he received from the Stock Yards Company, and under the head "*Marks*" wrote in the receipts: "*J. & W. Blaker, 202 cattle*," and "*J. & W. Blaker, 201 cattle*," and that this same agent on his cross-examination said that, "the words 'J. & W. Blaker' "on the receipt mean that the cattle mentioned therein "*were delivered for J. & W. Blaker* to the Stock Yards Com- "pany. *They were delivered to the Stock Yards Company for "J. & W. Blaker.*"

3. Had counsel, in their statement of facts, set forth the above matters, it would hardly have been consistent to say that "the Stock Yards Company notified J. & W. Blaker of their arrival and delivered the cattle," and thus, by implication, cast the blame, if any, of the delivery on the Stock Yards Company. What the agent of the railroad company did, at the Stock Yards, was to make the Stock Yards Company its agent, to deliver the cattle to J. & W. Blaker. It delivered the cattle to the Stock Yards Company for J. & W. Blaker with directions to deliver them to them. To whom could the Stock Yards Company deliver those

cattle if not to J. & W. Blaker under the directions it received from the railroad company?

4. These cattle were consigned to Myrick, not to the Stock Yards Company. Delivery to the Stock Yards Company, was not delivery to the consignee. The railroad company had no right to make the Stock Yards Company its agent to complete the delivery, and relieve itself of the duty of doing it. It certainly can not escape the responsibility of the delivery to J. & W. Blaker, by the Stock Yards Company, since the evidence is uncontradicted, that it told the Stock Yards Company, the cattle were for J. & W. Blaker, told it to deliver the cattle to them.

V.

1. On page 6 of brief, in the second paragraph, the statement is: "Of the thirteen cars containing shipment "of two hundred and two cattle, nine were consigned by "the way bills accompanying them, to P. Myrick or P. "Myerick, notify J. & W. Blaker, three cars to P. Myerick "or Paris Myerick, notify J. & W. Myerick, and one car to "Paris Myrick, ac. J. & W. Blaker. From these way bills "(see transcript of Record, pages 42 and 49), it distinctly "appears that one of the cars containing this shipment was "made upon the account of J. &. W. Blaker, to whom the "shipment was delivered."

2. The misstatements or mistakes in this paragraph are: 1. There were not thirteen cars contained in the shipment of 202 cattle; 2. There is no way bill that shows that the cattle contained in any car in that shipment were shipped on account of J. & W. Blaker. See Sell's testimony, page 35, transcript, 101 original record, where "12 way bills, date "November 10, 1877, were shown witness for 12 car loads "of cattle consigned to P. Myrick; notify J. & W. Blaker "Question. To whom were the cattle called for in these "bills delivered, and when? Answer. To the Stock Yards "Company, for J. & W. Blaker, November 11, 1877; there "were two hundred and two head of cattle; they came from "Chicago."

"The above way bills are marked 'Jas. H. Stevenson,' "Nos. 87 to 98 inclusive." See also the copies of the way bills of these numbers on pages 43, 44, 45, 46, 47 and 48 of transcript. Examine them and you will not find but twelve; they are all dated Nov. 10, 1877, and there is not one of them that says under column of "consignee or owner's name" "ac. J. & W. Blaker," as is incorrectly stated in this paragraph. They all have Myrick or Myerick as consignee, and say notify J. & W. Blaker.

3. This statement is more misleading by reason of its suppression of the truth perhaps, that by reason of its misstatements or mistaken statements: it suppresses the following facts: 1. That these way bills were and are the "*joint way bills*" and "*way bills of merchandise transported by S. V. R. R. and N. P. R. R. from Waverly to Philadelphia, Nov. 10, 1877.*" (See copy of each way bill.) 2. That these way bills were made not by the plaintiffs, nor Myrick, nor the Michigan Central Railroad Company, which received the cattle and gave the shipping receipts, which were attached to the drafts drawn against this shipment of cattle, but were made at Waverly in the office of the Lehigh Valley Railroad Company *for the joint use of conductors of trains of the two companies, and are as much the act of one company as the other, and each company is equally responsible for their accuracy.*

4. Then, I say, for the two reasons that there was no way bill showing that the cattle contained in any one of the cars which carried the 202 cattle from Waverly to Philadelphia, November 10, 1877, were shipped upon the account of J. &. W. Blaker, and the way bills are the act of the railroad company, and it is responsible for any inaccuracy contained therein, the argument drawn or attempted to be drawn from the supposed fact that there was evidence that any of the 202 cattle were the property of the Blakers or were delivered to them, falls of its own weight.

5. As further evidence that there were only twelve cars carrying the 202 cattle, see the first receipt of the superin-

e ndent of the Stock Yards, dated Nov. 11, 1877, page 56 transcript.

VI.

1. The 4th and 5th paragraphs on page 6 of the brief refer to the draft drawn and dated November 14, 1877, and the shipping receipt attached to it; and the 5th paragraph says: "The way bills accompanying this shipment were for "*twelve cars of cattle*, all consigned to Paris Myrick, P. "Myerick, Paris Myerick or Paris & Myerick; and each one "was for the account of J. & W. Blaker, and from them it "distinctly appears that the cattle were for the account of "J. & W. Blaker to whom they were turned over, not by "the North Pennsylvania Railroad Company, but by the "Drove Yard Company."

2. Now, the way bills accompanying this shipment, thirteen in number, were for thirteen carloads of cattle. They are at pages 49, 50, 51, 52, 53, 54 and 55, Nos. 99 to 111 inclusive, and bear date November 17, 1887. They are all "*joint way bills.*" They as well as the Nos. 87 to 98 inclusive, for the former shipment, are of Form S, and each purports on its face to be "*Way bills of Merchandise transported by L. V. R. R. and N. P. R. R. from Waverly to Philadelphia.*"

3. These way bills were all made at Waverly for *the joint use of conductors of the two companies, between Waverly and Philadelphia*, and as they were first made, and as they came into the hands of Sell, the agent of the North Pennsylvania Railroad Co. at the Stock Yards, the cattle were, in every one of them, consigned to Paris Myerick, and in none of them did J. & W. Blaker appear. Nos. 99, 100, 101, 104, 107, 108, 109 and 111 had no place of delivery mentioned in them, but in 102, 103, 105, 106 and 110, the consignment was to "Paris Myerick, Philad'a, Penn'a.

4. These way bills were received from the conductor of the train, by the railroad company's agent, Sell, in the Stock Yards, and he, as such agent, wrote, "*ac. J. & W. Blaker*," and turned the cattle over to the superintendent of

the Stock Yards Company for delivery by that company to J. & W. Blaker. See Sell's testimony and the testimony of William Harris, especially his cross-examination, on page 62 of transcript, 157 original record, where he says: "We "deliver the cattle to whomsoever the railroad company "directs, and take care of any charges the railroad company "specifies, and that we did in these two instances after we "received these cattle from the railroad company for J. & "W. Blaker alone."

5. To whom else than J. & W. Blaker could the Stock Yards Co. deliver these cattle, under the facts I have referred to, and which, and more in the same direction, are contained in the record? The Stock Yards or Drove Yards Company, it is true, did deliver them to the Blakers. Why? Because the railroad company directed it to be done. Because it said on the way bills delivered to the Stock Yards Company that they were *consigned to Myrick for the account of the Blakers*, and because, as Sell says, *he delivered them for the Blakers*, and as Harris says, *directed them to be delivered to them.*

6. After all this array of facts, is there any foundation in the record for the statement, that the way bills show that these cattle were shipped upon the account of the Blakers, or is it true, as matter of fact, that the cattle were delivered to the Blakers "*not by the North Pennsylvania "Railroad Company, but by the Drove Yard Company?*"

Is it not true, that in all that the Drove Yard Company did, about delivering these two shipments of cattle to the Blakers, it was the hand of the railroad company, and that what it did, the railroad company did? Did not the railroad company deliver those cattle to the Blakers? Can it be heard to charge the blame of delivery of those cattle to the Drove Yard Company? I seem to hear your Honors answer, *No.*

J. A. SLEEPER,
Counsel for Defendant in Error.

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SUPREME COURT OF THE UNITED STATES.

THE NORTH PENNSYLVANIA RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE COMMERCIAL NATIONAL BANK OF CHICAGO,
Defendant in Error.

BRIEF AND POINTS FOR DEFENDANT IN ERROR.

By J. A. SLEEPER,
Of Counsel.

CHICAGO:
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1887.

SUPREME COURT OF THE UNITED STATES.

THE NORTH PENNSYLVANIA RAILROAD COMPANY,
Plaintiff in Error,
vs.
THE COMMERCIAL NATIONAL BANK OF CHICAGO,
Defendant in Error.

Brief and Points for Defendant in Error.

I.

This action was brought by the defendant in error against the plaintiff in error to recover the value of 404 head of cattle bought by one Paris Myrick, in Chicago, Illinois, in November, 1882, and shipped to Philadelphia to his own order.

The declaration contains two counts in trover, each for 202 head of cattle of the value of $30,000, and two counts in case, each for neglect of duty by the railroad company, to deliver 202 head of cattle, of the value of $30,000, to the bank, upon the order of Paris Myrick at Philadelphia, as it had agreed to do, but on the contrary thereof, delivering them to J. Blaker and W. Blaker without the order, permission or consent of the bank, whereby it lost, etc.

II.

The facts shown by the evidence as contained in the record are:

1. That November 7, 1884, one Paris Myrick, at Chicago, Illinois, bought 202 head of cattle, weighing 240,000 pounds, which on the same day he delivered to the Michigan Central Railroad Company at Chicago, to be transported to Philadelphia, consigned to his order, the words "Notify J. & W. Blaker" being inserted in the bill of lading or shipping bill.

2. That Myrick received from the railroad company a through bill of lading or shipping bill for these cattle. He then drew his draft, dated November 7, 1884, for $12,287.57, to the order of George L. Otis, plaintiff's cashier, on J. & W. Blaker, Newtown, Bucks county, Pennsylvania, attached the bill of lading to it, delivered it to the plaintiff, bank, who discounted and advanced the money to Myrick on security of the bill of lading.

3. On November 14, 1884, Myrick bought 202 other cattle weighing 260,000 pounds, which he shipped over same road, consigned to his own order at Philadelphia, "Notify J. & W. Blaker." He received from the railroad company the same kind of bill of lading, drew his draft, dated the same day, on Blakers, at Newtown, delivered the same to the bank, with bill of lading attached; the bank advanced him the money named in it—$12,448.12.

4. The cattle covered by these two shipments came to the defendant below, in the course of their carriage or transportation from Chicago to Philadelphia; they were from thence carried by it to Philadelphia, and delivered by it to J. & W. Blaker, without the order, permission or consent of the plaintiff, bank, without receiving or having the bills of lading, and without receiving payment for the value of the cattle. The Blakers took the cattle, sold them, and applied the proceeds to their own use; did not pay the draft then or ever. The plaintiff has lost the money so ad-

vanced on the security of the bills of lading, say $24,735.69 and the interest thereon.

5. There is one other fact, which appears in the record, that ought to be considered, perhaps, in connection with the foregoing.

One Henry Burnett, who was in the employ of the Blakers, and whose business it was to be at Chicago when the cattle were shipped, take charge of them on their way, feed and water them, and when the cattle reached their destination leave them. He had nothing to do with the delivery of the cattle to any one.

6. As one of the points we make is, that giving the defendant the benefit of the most favorable construction of all the evidence, it will be found on examination that there is no evidence in the record from which a jury could properly find a verdict for the defendant; and as it will be necessary for the court to examine and determine what is proved by the evidence, in order to a correct determination of the questions of law arising upon the record, we have given above a brief but accurate statement of the evidence and what we claim is proved by it.

III.

When the evidence was closed, the court, after listening to argument of counsel, said to the jury, "I am satisfied that the plaintiff, upon the facts as presented by both sides, is entitled to your verdict for the amount of his claim. In the view of the law at present adopted this is the result which I have reached."

Counsel for the defendant excepted to this instruction, the jury found a verdict for the plaintiff, with damages assessed at $34,271.41. The defendant moved for a new trial and assigned as a ground of motion that, "The learned judge erred in instructing the jury that the plaintiff, upon the facts as presented by both sides, is entitled to your verdict for the amount of its claim." The court overruled the motion and entered judgment on the verdict.

IV.

Two principal questions of law arise upon this statement of facts and the charge to the jury.

I. Was the court within the rules of law and practice in the courts of the United States, in so directing the jury, assuming that, upon the evidence produced by both sides, the court could see that a verdict for the defendant must be set aside on motion for new trial by the plaintiff?

II. Upon the whole evidence, giving it fullest force legally conceivable, favorable to the defendant, could the jury rightfully have found a state of facts upon which the defendant would have been entitled to judgment? or, in other words, is there a fact proved by the evidence which, in law, warranted the defendant, in delivering the cattle described in the declaration to the Blakers, without a production and surrender by them to the company, of the shipping bills, or bills of lading, issued by the Michigan Central Railroad Company? or without having the order or consent of the bank so to do?

V.

On the first point we say, assuming that the evidence with all inferences which the jury could justifiably draw from it was insufficient to support a verdict for the defendant, so that the court could see that such a verdict, if returned, must be set aside, then the charge of the court was correct, and the verdict must stand, and the judgment must be affirmed.

1. If the court had, after hearing argument, come to the conclusion that the verdict ought to have been given for the defendant, and had then set it aside, found the facts for the defendant and given judgment against the plaintiff, the case would come within the rule announced in *Travelers Insurance Company vs. Baylis*, 113 United States, 316, and your Honors might, under the doctrine of that case, reverse the judgment upon complaint of plaintiff below.

2. But we submit that this case is distinguishable from that, in this:

(a) There is really no conflict as to the facts which were controlling of the rights of the parties; *i. e.*, the evidence of title to the cattle was all contained in the shipping bills, and in the way bills or manifests accompanying the cattle and in the hands of the conductor of the company when the cattle reached the stock yards, and when they were delivered to the Blakers.

(b) There is no dispute that the defendant delivered the cattle to the Blakers, without the production, by them, of the shipping bills, or payment of the value of the cattle, and without consent of the bank.

(c) There is no dispute that the plaintiff's drafts, drawn by Myrick on the Blakers, had never been paid by any one, nor that the bank had lost all the money it had advanced to Myrick on the security of those cattle.

(d) The defendant did not object that the court was usurping the province of a jury, was finding upon disputed facts, nor was it insisting that the court should submit any question of fact to the jury, as was done in the case referred to.

(e) The objection of the defendant was that upon the undisputed facts the plaintiff in law was not, but that the defendant was, entitled to judgment.

(f) So we say that on the first point there is no error, unless upon examination of the record for the facts, it shall be found that there is evidence upon which the jury could justifiably have found for the defendant, and had such a verdict been returned the court ought not to have set it aside.

3. To sustain our position we refer to the following cases in this court:

Baylis v. *Travelers Insurance Company*, 113 U. S. 316, in which the rule is stated and authorities referred to, and the case distinguished from other cases.

Randall v. *Baltimore & Ohio Railroad Company*, 109 U. S.

478, and cases there cited; *Higgins* v. *McCrea*, 116 U. S. 671.

The cases thus far cited are for the most part where the instruction has been against the plaintiff for insufficiency of his evidence. But in *Marshall* v. *Hubbard* 117 U. S. 415, the defendant set up as a defense, false and fraudulent representations. He assumed the burden of proving it. The court instructed the jury that the defendant had not proved his defense, and for that reason they must find for the plaintiff.

Thus we see the rule invoked works with equal force, whether the plaintiff's evidence be insufficient to sustain his action, or the defendant's to sustain his defense. Upon principle it is obvious, but in practice it has been declared and acted upon.

Vicksburg & Meridian Railroad Company v. *Putnam*, 118 U. S. 545.

VI.

As to the second point, we say that the evidence on both sides, after giving the defendant the benefit of all the inferences which the jury could justifiably draw from it, upon the most favorable consideration of it for sustaining the defense, presented a case where a verdict for the defendant, if such a verdict had been returned, must have been set aside for want of any evidence to support it.

1. There is no dispute that Myrick bought the cattle on the market in Chicago; that he borrowed of the plaintiff the money with which he paid for them; that the money was advanced in pursuance of an arrangement made between the bank by Otis, its cashier, as detailed and stated by him in his testimony, pages 12 and 13 printed record.

2. There is no dispute that the Michigan Central Railroad Company issued to Myrick the two shipping bills for the transportation of the cattle in question, as set out at pages 8, 9, 10, 11 and 12 of printed record; none, that in and by each of those shipping bills the cattle were consigned to

"Order Paris Myrick, notify J. & W. Blaker, Philadelphia, Pennsylvania;" none, that they were both delivered by Myrick to the bank, with his drafts, set out at page 8 printed record, and attached to those drafts, and sent by the plaintiff to the bank at Newtown, Pennsylvania, for presentation and collection; none, that they have never been paid; none, that these cattle, in due course of their regular transportation, came to the defendant, who transported them to Philadelphia and delivered them to the Blakers, notwithstanding the way bills or manifests which it received with the cattle, showed that Paris Myrick was the owner and consignee of those cattle, and that the Blakers were not the owners or consignees, and were not entitled to them.

3. There is not only no evidence to justify or excuse the defendant for having delivered those cattle to the Blakers, but the undisputed and entire evidence proves notice to the defendant that the Blakers were not the consignees of the cattle, had no right to them, and that it should not deliver them, save upon the order of Myrick indorsed on the shipping bills, or accompanying them. The delivery, therefore, of the cattle, by the defendant to the Blakers, was not only grossly negligent, but actually a conversion of the property, and without dispute rendered the defendant liable in law to the plaintiff, upon the undisputed facts, for the value of the cattle.

In *Alderman et al.* v. *Eastern Railroad Company*, 115 Massachusetts 233, a car load of oats was shipped from Detroit, Michigan, by Botsford, Hibbard & Company, to be transported to Salem, Massachusetts, and there delivered to the order of themselves. The oats were forwarded at the request of Chandler & Co. of Boston, a bill of lading was sent by consignors to a bank in Boston, with a draft, for the price of the oats attached, on Chandler & Co. The bank was authorized to indorse over the bill of lading to Chandler & Co., on payment of the draft. The draft was accepted by Chandler & Co., March 16, 1871. March 18th, plaintiff advanced Chandler & Co. funds sufficient to take up the draft. It was taken up by Chandler & Co. The cashier of the bank indorsed the

bill of lading to Chandler & Co., who immediately indorsed it to plaintiffs. Before the bill of lading had been assigned to plaintiffs, Chandler & Co. sold a carload of oats, to arrive, to Beckford & Dodge of Salem, and upon arrival of this car load, Chandler & Co. informed Beckford & Dodge, by letter, that this was the car load of oats bought by them, and authorized them to take it, and the freight lines delivered the oats to them, subsequently to the indorsement of the bill of lading to plaintiffs.

Court says: "The only evidence defendants had of any title in the goods was that furnished by the way bill, that they belonged to the consignors. The delivery by the defendant to Beckford and Dodge was therefore a conversion of the property, for which it is responsible to the plaintiffs, as rightful owners of the goods."

So in the case at bar. The way bills furnished evidence that the cattle belonged to Myrick, and were to be delivered to him or on his order only.

Newcomb v. *Boston & Lowell Railroad Company*, 115 Mass. 230.

Fifth National Bank Chicago v. *Bailey*, 115 Id. 228.

Stollenwerck v. *Thatcher*, 115 Id. 224, are to the same effect.

The delivery, by the owner of goods, of a common carrier's receipt for them, not negotiable in its nature, as a security for an advance of money, with the intention to transfer the property in the goods, is a symbolical delivery of them, and vests in the person making the advance a special property in the goods, sufficient to maintain replevin against an officer who afterward attaches them upon a writ, against the general owner: *First National Bank of Green Bay* v. *Dearborn*, 115 Massachusetts, 219.

In *Libby et al.* v. *Ingalls et al.*, 124 Massachusetts, 503, goods were delivered by plaintiffs to a railroad company at Chicago, to be by it and other railroads, associated as the Red Line Transit Company, transported to Lynn, Massachusetts. The packages were marked "C. H. Lowell & Co., Lynn, Massachusetts."

Shipping receipts were given to plaintiffs, "Red Line Transit Company, June, 1875. Received in apparent good order, from Libby, McNeill & Libby, to forward as consigned in margin."

"Marks and Consignees."

"C. H. Lowell & Co., Lynn, Mass. Order Libby, McNeill & Libby."

The goods were delivered to defendants as they arrived in Boston, by the Boston & Albany Railroad Company, to complete their transportation, and freight bills given containing the following instructions: "Order Libby, McNeill & Libby. Notify C. H. Lowell & Co., Lynn."

The shipping receipts were given to Adams Express Company, indorsed in blank by plaintiffs, attached to drafts drawn by them on C. H. Lowell & Co., payable to order of Adams Express Company, by which they were indorsed from time to time, and given to defendants. In the case of the goods in dispute in that case the drafts were not paid by Lowell & Co., nor were the indorsed shipping receipts given them; but the goods were delivered to Lowell & Co., without their producing the indorsed bills of lading, or any order from the plaintiffs.

Court says, "The receipts, with the attached drafts, were plain instructions, when received, that the receipts, which were the evidence of title to the goods, were to be delivered only on payment of the draft. * * * Till Lowell & Co. had bought the goods, *by paying the drafts*, the defendants were not authorized to deliver the goods to any one. * * * The delivery to C. H. Lowell & Co., without authority, was a conversion of the goods, and the defendants are liable to the plaintiffs for the value of the whole." *Hathaway et al.* v. *Haynes, Trustee*, 124 Massachusetts, 311.

In *Forbes et al.* v. *Boston & Lowell Railroad Co.*, and *same* v. *Fitchburg Railroad Co.*, 133 Massachusetts 154, "Gallup, Clark & Co.," grain dealers in Chicago, in response to an order given Foster & Co., forwarded to Boston fifty car loads of corn, by the National Dispatch Fast Freight Line, an association of railroads, whose roads make a continuous

line from Chicago to Boston, the defendant's road being part of the line. The freight line issued an inland bill of lading, by which the corn was consigned to the order of Gallup, Clark & Co., at Boston. G. C. & Co. drew a draft on Foster & Co., for the price of the corn, attached to it the bill of lading and forwarded both to Tremont Bank of Boston. October 24, 1879, Foster & Co. paid the bank the amount of the draft, received from it the draft and bill of lading, and immediately indorsed it to the plaintiffs, as security for an advance then made by them to the full amount of the draft, and they have held them ever since. The corn was received and transported by the defendant, arriving in Boston October 30, 1879. It remained in cars until December 12, 1879, when, by Foster & Co's. order, it was shipped on board a vessel for Cork, and exported to Ireland. Foster & Co. did not produce and present to the defendant any bill of lading, but represented that it was in their possession. Held, that the transfer of the draft and bill of lading, passed the title to the corn to plaintiffs, and that the plaintiffs were entitled to judgment.

The case of *same* v. *Fitchburg Co.* follows, in which the same rule is held.

Wright et al. v. *The Northern Central Railway Co.*, 8th Philadelphia Report, 19. Manifest was "Order of Bright, Denit & Co., notify Wellington Jones, Shamokin, Pennsylvania."

Huskill v. *Farmers and Mechanics National Bank*, 89 Pennsylvania State, 155.

Tiedeman v. *Knox*, 53 Maryland, 612.

Shaw v. *R. R. Co.*, 101 U. S. 537, was an action of replevin to recover possession of certain cotton. Novell & Co., of St. Louis, sold to the Merchants National Bank of St. Louis, their draft for $11,947.43 on Kuhn & Brother, of Philadelphia, and as collateral security for the payment thereof, indorsed in blank and delivered to the bank an original bill of lading for 170 bales of cotton that day shipped to Philadelphia. The duplicate bill of lading was sent to Kuhn & Brother on the same day by Novell & Co. The Merchants

National Bank forwarded the draft with the original bill of lading attached, to the Bank of North America. On November 14, 1874, the latter bank sent the draft—the original bill of lading being attached—by messenger to Kuhn & Brother for acceptance. Kuhn & Brother accepted the draft, but without being detected, substituted the duplicate bill of lading for the original.

On the same day Kuhn & Brother indorsed the original bill of lading to Miller & Brother and received an advance thereon of $8,500.

The cotton in controversy was, through agency of a broker, sold by sample to Shaw & Ersey. The original bill of lading was deposited on the same day with the North Pennsylvania Railroad Company by which the cotton was received, and on its arrival was delivered to Shaw & Ersey.

This court held that the Merchants National Bank was the owner of the cotton by means of having the original bill of lading indorsed and delivered to it; that under the circumstances of the case, the bank did not lose the title by the fraud of Kuhn & Brother; that Miller & Brother did not acquire title by the indorsement and delivery to them of the original bill of lading by Kuhn & Brother, and the bank was entitled to recover the cotton from Shaw & Ersey.

Dows v. *National Exchange Bank, Milwaukee*, 91 U. S. 618.

St. Louis & I. M. R. R. Co. v. *Larned*, 103 Ill. 293.

Holmes v. *Bailey*, 92 Penna. State, 57.

Bank of Commerce in Buffalo v. *Amos A. Bissell et al.*, 72 N. Y. 615, is substantially the case at bar. Defendants were common carriers; they had given a bill of lading for a boat load of wheat shipped from Buffalo by Sears & Daw to New York "on account and order" of bank. The bill of lading contained this direction: "Notify E. S. Brown, New York." The bill of lading was given to the bank as security for a time draft of Sears & Daw on Brown and discounted by the bank. Defendants delivered the wheat to Brown without the bill of lading, and without his paying the draft. Held, the defendants were liable.

The case is also in point, as to the attempt of defendant in this case to show by several witnesses a custom of carriers to deliver property without presentation of bills of lading. To same effect are *Farmers and Mechanics Nat. Bk.* v. *Logan*, 74 N. Y. 568, and *Farmers and Mechanics Nat. Bk.* v. *Atkinson*, same, 587.

The City Bank v. *Rome, W. & O. R. R. Co.*, 44 N. Y. 136.

The Cayuga County National Bank v. *Daniels*, 47 N. Y. 631.

The Marine Bank of Chicago v. *Wright*, 48 N. Y. 1.

Dows v. *Green et al.*, 24 N. Y. 638.

Bank of Rochester v. *Jones*, 4 N. Y. 497.

These cases I think sustain our position, that on the evidence given on both sides, the plaintiff was entitled to have the verdict in its favor, and that had the jury returned a verdict for the defendant, it would have been the duty of the court to set it aside. I have been at great pains to make a thorough examination of reported cases bearing upon the questions which arise in this case. My examination has resulted in finding substantially, and unbroken, and uniform rule established by the cases. The rule for which we contend, has been so long held by courts everywhere, that it has long since been elementary.

J. A. SLEEPER,

Of Counsel for Defendant in Error.